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SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

No. 73-6032

SHARON ROE and DOROTHY POE, on behalf of themselves and others similarly situated,

APPELLANTS

VS.

NICHOLAS NORTON, individually, as Commissioner of Welfare of the State of Connecticut, and on behalf of others similarly situated.

APPELLEE

On Appeal from the United States Three Judge District Court for the District of Connecticut

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JURISDICTIONAL STATEMENT

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Dated: January 3, 1974

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APPELLEE

On Appeal from the United States Three Judge District Court for the District of Connecticut

JURISDICTIONAL STATEMENT

Appellants appeal from the judgment of the United States Three Judge District Court for the District of Connecticut entered September 7, 1973 denying their application for a permanent injunction and dismissing the case, and submit this Jurisdictional Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that substantial questions are presented.

OPINIONS BELOW.

The opinions of the United States Three Judge District Court are not yet reported. The opinion for the District Court for the District of Connecticut denying preliminary relief in a companion case, Doe et als. v. Norton, is reported at 356 F. Supp. 202. Copies of the Judgment and of the Memorandum of Decision, Findings of Fact and Conclusions of Law of the District Court are attached hereto as Appendix A.

JURISDICTION.

Appellants brought this action under the Civil Rights Act, 42 U. S. C. §1983, jurisdiction being conferred on the District Court by 28 U. S. C. §1343(3). In it they sought declaratory and injunctive relief under 28 U. S. C. §2201 et seq.

The constitutionality of a state statute being in question, this action was consolidated with Doe et als. v. Norton (Civil Action No. 15,579, U. S. D. C., D. Conn.) in which a three judge court had previously been convened under 28 U. S. C. §2281 and 2284.

The court below filed its Memorandum of Decision, Findings of Fact and Conclusions of Law on September 5, 1973; Judgment thereon was entered September 7, 1973.

Appellants filed their notice of appeal November 5, 1973. Jurisdiction over this appeal is predicated on 28 U. S. C. §1253, see e.g. Carter v. Stanton 405 U.S. 669 (1972).

THE STATUTE INVOLVED.

Connecticut General Statutes §52-440b provides:

> "(a) If the mother of any child born out of wedlock, or the mother of any child born to any married woman during marriage which child shall be found not to be issue of the marriage terminated by a divorce decree or by decree of any court of competent jurisdiction, fails or refuses to disclose the name of the putative father of such child under oath to the welfare commissioner, if such child is a recipient of public assistance, or to a selectman of a town in which such child resides, if such child is a recipient of general assistance, or otherwise to a guardian or guardian ad litem of such child, such mother may be cited to appear before any judge of the circuit court and compelled to disclose the name of the putative father under oath and to institute an action to establish the paternity of said child.
>
> "(b) Any woman who, having been cited to appear before a judge of the circuit court pursuant to subsection (a), fails to appear or fails to disclose or fails to prosecute a paternity action may be found to be in contempt of said court and may be fined not more than two hundred dollars or imprisoned not more than one year or both. "

Other statutes involved in the construction of C.G.S. §52-440b but which are not challenged in this action include:

1. C.G.S. §52-435a (as amended).

> "Proceedings to establish paternity of a child born or conceived out of lawful wedlock, including one born to, or conceived by, a married woman but begotten by a man other than her husband, shall be instituted by a verified petition of the mother or expectant mother, with summons and order, filed in the circuit court for the circuit in which either she or the putative father resides....No such petition shall be brought after three years from the birth of such child, or after three years from the cessation of contribution toward support of the child by the putative father, whichever is later...."

2. C.G.S. §52-435b.

> " The mother of any child for whom adjudication of paternity is sought in paternity proceedings shall not be excused from testifying because her evidence may tend to disgrace or incriminate her; nor shall she thereafter be prosecuted for any criminal act about which (1) she testifies in connection with such proceedings, or (2) she makes any statement prior to such proceedings with respect to the issue of paternity. "

3. C.G.S. §52-440a.

> " The state or any town interested in the support of a child born our of wedlock may, if the mother neglects to bring such petition, institute such proceedings against the person accused of begetting the child, and may take up and pursue any petition commenced by the mother for the maintenance of the child, if she fails to prosecute to final judgment. Such petition may be made by the welfare commissioner or the town welfare administrator on information and belief. The mother of the child may be subpoenaed for testimony on the hearing of the petition."

4. C.G.S. §52-442a.

> "(a) In lieu of or in conclusion of proceedings under §52-435a, the written acknowledgment of paternity executed by the putative father of the child when accompanied by a written affirmation of paternity executed and sworn to by the mother of the child and filed with the circuit court for the circuit in which the mother of the child or the putative father resides shall have the same force and effect as a judgment of that court;..."

QUESTIONS PRESENTED

1. Did the Three Judge District Court err in determining that mothers of children born out of wedlock have no constitutional right to refuse to bring an action to establish the paternity of their children and/or to refuse to seek monetary support from the fathers of said children ?

2. Did the Three Judge District Court err in deciding that the same mothers have no constitutional privilege against disclosing the names of the putative fathers of their children in open court ?

3. Where a statute is justified by its proponents as being designed to protect the interests of children born out of wedlock, and said statute requires disclosure and establishment of paternity even where such disclosure may not be in the interests of such children, did the District Court err in deciding that the statute does not create a constitutionally impermissible presumption ?

4. Where a state statute operates only against mothers, and only against the mothers of illegitimate children, does the statute violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution ?

STATEMENT OF THE CASE.

This action to challenge Connecticut General Statutes (C.G.S.) §52-440b on constitutional grounds (and its applicability to welfare recipients on grounds of conflict with the Social Security Act) was brought by complaint dated January 31, 1973. At hearing February 26, 1973 on plaintiffs-appellants (hereinafter "appellants") motion to convene a three judge court, the District Court, per Newman, J. ordered it consolidated with a similar case, Doe et als. v. Norton (cited supra., p.2) in which a three judge court had already been convened. All subsequest proceedings in the District Court involved both actions. All plaintiffs have proceeded at all times under pseudonyms in order to protect the privacy they seek to establish in this action.

Under C.G.S. §52-440b, refusal by the mother of an illegitimate child to divulge the name of the putative father of her child to the appropriate authority triggers an original civil contempt procedure[1], which may result in up to one year imprisonment and a two hundred dollar fine[2]. Under it the mothers may be forced

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1. Although nothing in C.G.S. §52-440b designates it as "civil", it is the Attorney General's position that that is the case; appellants do not dispute that interpretation; see Stipulations of record, ¶2.

2. While the requirements of §52-440b to divulge the fathers name and to bring and prosecute paternity actions appear to apply to all mothers of illegitimate children, only in three sub-categories is there any enforcement provision. These are a)State Welfare recipients, b)town welfare recipients, and c) instances in which some competent court has appointed a guardian or guardian ad litem who is not the mother. The District Court construed the statute to apply to all mothers.

1) to appear in court, 2) to testify as to the name and other identifying information about the putative father, 3) to "institute" a paternity action, and 4) to "prosecute" a paternity action. The Welfare Department has the power to bring a paternity action in the name of the Commissioner under C.G.S. §52-440a, and the mother can be forced to testify at the trial of any paternity action, C.G.S. §52-435b and 440a.

Appellants are the classes of mothers and children subject to the statute. This action was originally brought by two mothers on behalf of themselves, their children and the classes represented by each (Complaint, para.4., Substituted Complaint, para. 4).

2. cont.

Although appellants believe the statute is at least administered to discriminate against them as welfare recipients, neither the pleadings nor the evidence is directed toward this discrimination in administration, and it is not therefore an issue in this appeal.

For a number of years prior to 1969 the Connecticut State Welfare Department pursued a policy of requiring any recipient who was the mother and supervising relative of an illegitimate child to divulge the name of the child's putative father as a condition of the child's eligibility for Aid to Families with Dependent Children (AFDC). This practice was enjoined as violative of the Social Security Act, Doe v. Shapiro 302 F. Supp. 761, (D. Conn., 1969), appeal dismissed 396 U.S. 488, reh. den'd 397 U.S. 970 (1970). The Department thereafter attempted to require such divulgence as a condition of the mother's eligibility for AFDC benefits as a supervising relative. This practice also was enjoined, Doe v. Harder 310 F. Supp. 302 (1970), appeal dismissed 399 U.S. 902 (1970). This court reached the same conclusions in summarily affirming substantially identical decisions from three other Districts, Meyers v. Juras 404 U.S. 803, reh. den'd 404 U.S. 961 (1971), Carleson v. Taylor 404 U.S. 980 (1972), Weaver v. Doe 404 U.S. 987 (1971). Now Connecticut is at it again. After the second Doe decision, the Department supported H.B. 6040, now C.G.S. §52-440b, which again seeks to compel mothers of illegitimate children and prosecute paternity actions. The enforcement mechanism, however, is different.

The District Court, believing that there might be a conflict of interest between the mothers and their children, appointed separate counsel to represent any separate interests the children might have. Counsel for the children deposed Dr. Albert Solnit, director of the Yale Child Study Center and co-author of the recent book Beyond the Best Interests of the Child (with Anna Freud and Joseph Goldstein) (Free Press, 1973), and took an affidavit from Dr. Edward Zigler, former head of the Office of Child Development at the Department of Health, Education and Welfare. Both experts took the position that the interests of the illegitimate children were not advanced and might well be harmed by C.G.S. §52-440b. Dr. Solnit took the position that the child's interests were so greatly bound up with those of its mother that there could be no conflict of interest between them and any compulsion against the mother would prove psychologically harmful to the child. Dr. Zigler stated that in his opinion disclosure of the name and identity of the actual father to the child could be harmful because it would destroy an idealized and useful image the child would otherwise have about his/her father. On the basis of these opinions, the attorneys for the children joined appellants in urging the District Court to enjoin the operation of the statute.

Hearing on the merits was held April 30, 1973 before Timbers, Circuit Judge, and Blumenfeld and Newman, District Judges.

Appellant mothers presented evidence in fifteen affidavits (which were admitted by agreement). Fourteen of these were from members of the plaintiff class of mothers. The fifteenth, that of Katherine Lopes (Affidavit XV as filed), described in detail her experiences, particularly her feelings while being forced to prosecute a contested paternity case, testifying and being cross-examined. In her affidavit, named plaintiff Dorothy Poe did not want to prosecute a paternity action because of substantial fears that the pressures of testifying in court might cause her to undergo a nervous breakdown, and because she had never been able to realize any benefit from going ahead in the case of her older child (Affidavit of Dorothy Poe, paras. 7 and 8). In her affidavit Sharon Roe stated that she knew there was little likelihood that her child's father would ever contribute to her support and a good chance that he would break off his developing relationship with the child if she tried to force him to contribute to her support; she also felt very strongly that the Commissioner should not be in the position of telling her how to protect her family's financial interests; Ms Roe had only been a recipient of AFDC benefits a short time and expected to terminate them before long. (Affidavit of Sharon Roe, passim.).

In the cases of several other mothers who submitted pseudonymou affidavits, there was substantial reason to think that prosecuting a paternity action or divulging the putative father's name would not advance the family's financial interests, either because the

statute of limitations had already run (see C.G.S. §52-435a, Affidavits III and XIV), because the mother already had in her possession signed acknowledgments of paternity which could form the basis of a later support order under C.G.S. §52-442a (see Affidavits IV, V, and X), or because the mother was not herself certain of the father's identity (see Affidavits IX and XII). In all of the other cases there was an informed decision that the chances of detriment to mother and/or child were greater than the chances of gain.

Appellants argued, based on these facts, that §52-440b violated their constitutional right of privacy by depriving them of control of their families' destinies and probing into their past sexual conduct, that it contained a constitutionally impermissible presumption of unfitness on their part to make financial decisions for their families, that it violated their rights to equal protection of the laws and that it contravened the Social Security Act.

The Defendant offered no legislative history or evidence in support of his contention that the statute was intended to and did protect the interests of the illegitimate children. He relied instead solely on his claim of law that the interests advanced by appellants enjoyed no constitutional protection.

On September 5, 1973 the Court, per Blumenfeld, J., filed its Memorandum of Decision, Findings of Fact and Conclusions of Law denying plaintiffs-appellants applications for declaratory and injunctive relief and dismissing the case. Judge Newman filed a concurring opinion. On September 7, 1973 the Court entered judgment accordingly. This appeal followed.

THE QUESTIONS ARE SUBSTANTIAL

The issues of liberty from state compulsion in controlling their families' financial course, and of protecting their sexual activities from public disclosure are of obvious importance to all families containing an illegitimate child. In 1971 there were 4,533 births in which no name was listed as father on the birth certificate in Connecticut (Brief of Appellee below p. 8). These constituted 9.9% of the total births. The issues in this appeal may well have application in other states as well; as of 1973 New Jersey (N.J.S.A. §9:17-2) Georgia (Code of Geergia, §74-301) and Arkansas (Arkansas Statutes §34-713) had similar statutes. The attorney for the appellants has been informed that other states are considering such legislation. Unquestionably the issues affect a very substantial number of people.

A. THE DECISION BELOW PERMITS INVASION OF APPELLANTS CONSTITUTIONALLY GUARANTEED LIBERTY.

The right of parents to determine the care of their children has long been recognized as constitutionally protected liberty: Meyer v. Nebraska, 262 U.S. 390 (1923); Pierce v. Society of Sisters 268 U.S. 510 (1925); Prince v. Massachusetts, 321 U.S. 158 (1944); and Wisconsin v. Yoder 406 U.S. 205 (1972). The integrity of the family unit has likewise, been protected, Griswold v. Connecticut, 381 U.S. 479 (1965); Stanley v. Illinois 405 U.S. 645(1972), as has the right to determine, without state interference, such matters as sex, child-bearing and marriage; see e.g. Skinner v. Oklahoma 316 U.S. 535, Loving v. Virginia, 388 U.S. 1, Eisenstadt v. Baird, 405 U.S. 438, and Roe v. Wade, 35 LEd 2d 147 (1973). A right which is within the constitutionally protected "zone of privacy" can be infringed only where there is a compelling state interest, Roe v. Wade, supra, at 178, and then only by statute "narrowly drawn to express only the legitimate state interests at stake" Roe v. Wade, Ibid., Eisenstadt v. Baird, supra at 460, 463-464 (White J., concurring). The burden of proving that such compelling interest exists is on the state, Roe v. Wade, supra, at 179.

The zone of privacy may protect a relationship such as the doctor-patient relationship Roe v. Wade, supra. Doe v. Bolton 35 LEd 2d 201 (1973), or the marital relationship, Griswold v. Connecticut, supra. Or it may protect an individual, Eisenstadt v. Baird, supra. Where the privacy of a family is concerned, what

is protected is the parent's right to decide questions affecting the family; see Pierce v. Society of Sisters, supra., Stanley v. Illinois, supra., at least until the children are old enough to formulate their own views on the subject; see Wisconsin v. Yoder 406 U.S. 205, 229 et. seq., and Matter of Seiferth 309 N.Y. 80. All of the children involved in this action are well below the age at which their opinions can be formulated and represented separately from those of their parents.

As to this type of privacy at least, there is no conflict of interest between mothers and children. Any financial gain to the child is also financial gain to the mother since it relieves her, to that extent, of her duty to support the child. Psychologically, there is also no conflict, see Deposition of Dr. Albert Solnit, passim

If the question is whether the child should for his/her own good be informed who his/her father is, that is a decision to be made in private between the mother and her counsellor. See Roe v. Wade, supra.

Even where subject to countervailing interest, these parental rights may not be invaded by state power except in accordance with due process, Stanley v. Illinois, supra. (See part IIC infra., which argues §52-440b violates due process).

The named plaintiffs have been faced with a difficult choice: whether to pursue the vague possibility of receiving support and other benefits from the putative fathers of their children through the channel of a paternity action with its attendant possible public humiliation and harassment and with the possibility that the father would flee the jurisdiction thus ending any relationship

either she or the child now has with him, or to forego that vague possibility of financial benefit for any of a variety of other reasons.[1] While many, probably most, women in their predicament voluntarily choose the former, plaintiff mothers and the class they represent chose the latter. Plaintiffs took this course for a variety of rational reasons which did not ignore the interests of their children;

There are a number of decisions in somewhat similar cases intimating that family decisions such as those involved in this case should be considered within the constitutional zone of privacy. Thus Judge Murray (D Mass), in enjoining a municipal justice from forcing welfare mothers to sign nonsupport warrants and then trying the cases of criminal nonsupport, stated:

> It may be that conduct by the defendant which resulted in women unwillingly swearing out non-support complaints against their husbands and being further involved in the subsequent prosecution might be found to violate other rights, for example the right of privacy, protected by the Constitution through the first amendment (citations omitted). But these rights were not asserted by the plaintiffs and the court does not undertake to decide them Haley v. Troy 338 F. Supp. 794 at 804. (D Mass, 1972)

And in striking down an Oregon regulation requiring, as a condition of AFDC eligibility that the mother sign a complaint, Judge Goodwin (writing for a unanimous three-judge panel) stated:

> The State Public Welfare Division was directed by Congress to secure the mother's cooperation in developing potential income resources, but it was not authorized to terminate an AFDC grant (which is for children) to coerce the cooperation of a mother... Neither do we hold that the State of Oregon may not seek the AFDC mother's cooperation

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[1] See Affidavit XIV (Katharine Lopes) for an example of the vagaries of the process C.G.S. §52-440b initiates.

> through means less drastic than the withdrawal of benefits from her children. Meyers v. Juras 327 F. Supp, 759, 762 (1971) affirmed 404 U.S. 803 (1972).

Clearly, §52-440b is substantially more drastic than the procedure found unacceptable in Juras.

There are, of course, limitations to the extent of the constitutional zone of privacy. Limits may be imposed either by opposing constitutional rights or by "compelling interests". It is submitted that neither is present here. The defendant did not plead or prove any compelling interests, although it was his burden to do so, Roe 35 LEd 147, 179.

There is no constitutional right in opposition to the right asserted by plaintiff mothers. The children have a statutory right to support from their parents, Connecticut General Statutes, §17-320. In addition, if the state has support laws as Connecticut does, it may not discriminate against illegitimate children, Gomez v. Perez 409 U.S. 535 (1973). But there has not, heretofore, been a constitutional right to receive support.[3]

The financial interests which are claimed to oppose the mother's privacy right, whether they are conceived of as derivative of the child's interests in seeking support or the state's interest in seeking reimbursement for Welfare monies spent, are

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[3] Nothing in Gomez supports the claim that the child's interest is always greater than the parent's right to determine the family destiny or the parent's right to privacy. Gomez was in no way concerned with such a situation. See Linda R.S. v. Richard D. 35 L.Ed.2d 536 (1973).

not compelling interests justifying overriding the parental privacy right, Shapiro v. Thompson 374 U.S. 618 (1969). See also May v. Anderson 345 U.S. 528 (1955).[4]

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[4] Cases imposing on parents the duty of cooperating with other types of public policies are not controlling here. In Jacobson v. Massachusetts 197 U.S. 11, the Supreme Court upheld a state law making compulsory vaccinations. The rationale for decision was that there was a particular public interest in preventing the spread of disease which justified overriding any private interests to the contrary. In the language of later cases, the public health constitutes a compelling state interest.

In Prince v. Massachusetts 321 U.S. 158, the Supreme Court upheld a criminal conviction of a parent for violation of the child labor laws over a claim that the First Amendment's free exercise of religion clause prevented the state from so criminalizing religious activity, in that case the selling of religious tracts. In so ruling, the court relied upon the validity of the child labor laws which found a public purpose sufficient to override any contrary private interests, see, e.g. Sturges v. Beauchamp 231 U.S. 320 (1913). Prince has been limited by later interpretation, Sherbert v. Verner 374 U.S. at 402-3, Wisconsin v. Yoder 406 U.S. at 230, and it is now appears that the decision in Prince would not be upheld in light of the "compelling state interest" test now applicable to cases involving the constitutional right of privacy. See Roe v. Wade, supra,, at 4225-6. Prince, in any case was concerned with the validity of a regulation upon the activities of minors though enforced against their guardians in circumstances where the same activities could not be prevented if carried on by an adult. It is hardly determinative of this case in which there is no evidence that that the Statute promotes, and substantial evidence that it is harmful to the interests it theoretically promotes.

Nor is the power of the state to compel school attendance compelling here, see, e.g. State v. Bailey 157 Ind. 324, Pierce v. Society of Sisters 268 U.S. 510, [illegible], and Wisconsin v. Yoder supra. These cases rely upon the public and private benefits which compulsory education supposedly confers, and therefore meet the compelling state interest test. In the present instance, the defendant has not suggested any public benefit from the enforcement of C.G.S. §52-440b; the only ultimate gain which could be forthcoming from its enforcement would be private and financial, and accrues as

B. THE DECISION BELOW, BY FAILING TO FIND THAT THE CONSTITUTIONAL RIGHT OF PRIVACY INCLUDES A PRIVILEGE AGAINST TESTIFYING, UNDERMINED THE RIGHT.

The areas of sexual conduct, and procreation are unquestionably protected by the "zone of privacy" emanating from several of the specifically enumerated constitutional liberties, Griswold v. Connecticut (supra) Skinner v. Oklahoma (supra) Loving v. Virginia (supra) Eisenstadt v. Baird (supra) Roe v. Wade (supra),

The decision below seriously undermines the holding of N.A.A.C.P. v. Alabama 357 U.S. 449 (1958) incorporating a privilege against disclosure under circumstances where dampering of First Amendment liberties would be likely to result. In so doing, the District Court sought to distinguish the line of cases commencing with Griswold on the basis that none of them involved, at the constitutional level, a privilege against testimony. Other lower courts, however, have found that the right of privacy contains a concomitant right against disclosure. See, e.g. Schulman v. New York City Health and Hospital Corp. 70 Misc 2d 1093, 335 NYS2d 343, (1972) rev'd and remanded (in light of Roe v. Wade) 41 AD2d 714, 341 NYS2d 242 (1973), Judgment on remand 346 NYS2d 920 (1973)

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4 (cont)

much to the mothers as to the babies.

Nor do cases permitting the state to remove children from their parents custody temporarily to affect vital medical procedures support defendant's position. See e.g. People ex. rel. Wallace v. Labrenz 411 Ill. 618, cert. den'd 344 U.S. 824 and Jehovah's Witnesses v. King County Hospital 278 F. Supp. 488 D. Wash., (1967). They impose no penalty on the parents and permit such removal only after individual due process hearing as to its propriety. See e.g. Stanley v. Illinois, supra.

(appeal pending) which struck down a New York City Health Department regulation requiring the filing of a fetal death certificate following an abortion. See also Roe v. Ingraham 480 F2d 102, (2nd Cir., 1973, Friendly Chj) convening a three-judge court to determine inter alia, whether a requirement that certain Doctor's prescriptions be registered with the State Department of Health violated the constitutional right of privacy.

There is thus a substantial question whether the Court below erred in refusing to find that a privilege against disclosure is contained in the constitutional right of privacy.

C. THE STATUTE TAKES APPELLANTS LIBERTY WITHOUT DUE PROCESS OF LAW.

As noted above, C.G.S. §52-440b removes from the appellant mothers the right to decide for themselves whether or not to seek support for their children from the children's fathers. The statute is premised on the assumption that any refusal or failure of the mother to seek such support is contrary to the child's interests; it therefore singles out those mothers who refuse to pursue court action to establish paternity and penalizes them severely. Yet, as the uncontraverted evidence presented by appellants and by the attorneys for the children proved, the assumption is erroneous and illogical in many cases. But §52-440b does not permit,[5] much less require any prior proceeding to

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5 The statute is permissive rather than mandatory as to penalty, for this reason the District Court found that the presumption was not irrebuttable. But neither the majority of the District Court nor the Statute provided any guidelines for the supposed discretion of the Connecticut Circuit Court judges, and Judge Newman's concurrence gives only the barest of outlines. The Court also overlooked the Stipulation as to policy filed by the defendant, which indicated that it was his policy to pursue all non-cooperating mothers within his powers under the Statute, Stipulation ¶1

determine where the childs best interests lie.

Arbitary and irrebuttable presumptions in the area of child custody and support violate due process, Stanley v. Illinois 405 U.S. 645, (1972). See also Vlandis v. Klein 37 LEd2d 63 (1973).

While the state may sometimes, in the compelling individual interest of the child, justify invasion of the zones of privacy outlined above, the question of whether it may do so in the wholesale manner contemplated by §52-440b is clearly substantial so as to warrant plenary review.

D. THE DECISION BELOW DENIES APPELLANTS EQUAL PROTECTION OF THE LAWS.

C.G.S. §52-440b operates only against mothers and only mothers of illegitimate children. It forces this class of persons to seek support from the other parent for a child on penalty of up to a year in jail and a $200.00 fine. There is no Connecticut Statute requiring any such action of any other class of parents, though the child's interest in seeking support the same is irrespective of whether he or she is illegitimate or legitimate or of whether he or she resides with a mother or father. No evidence was adduced by defendant which would support these categories.

In applying against women only and against families having an illegitimate child only, the Statute relies on two suspect categories: sex and illegitimacy. See e.g. Stanley v. Illinois 405 U.S. 645 (1971) and Gomez v. Perez 409 U.S. 535 (1973). Thus, whether or not the court is persuaded that plaintiffs-appellants claim of a constitutional privacy right against the operation of the Statute, there are substantial questions presented as to which equal protection standard should have been applied and whether the Statute measures up to the applicable standard, see e.g. Weber v. Aetna Casualty and Surety Co. 406 U.S. 164 (1972), Gomez v. Perez (supra.) and San Antonio Independent School District v. Rodriguez 36 LEd2d 16 (1973).

CONCLUSION

Appellants respectfully submit that the Supreme Court has jurisdiction over this appeal under 28 U.S.C. §1253 and that the questions presented , involving as they do whether a State statute violates constitutional rights of parents to bring up their children and of privacy and whether the same statute denies these mothers due process and the equal protection of the laws, are substantial. Appellants therefore respectfully urge this Court to reverse summarily the United States Three Judge District Court for the District of Connecticut or to set the case down for plenary consideration.

RESPECTFULLY SUBMITTED

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Supreme Court, U.S.
FILED
JUL 15 1976

APPENDIX

In the Supreme Court of the United States

OCTOBER TERM, 1976

No. 75-6063

SHARON ROE AND DOROTHY POE ON BEHALF OF THEMSELVES AND OTHERS SIMILARLY SITUATED, APPELLANTS,

v.

NICHOLAS NORTON, INDIVIDUALLY, AS COMMISSIONER OF WELFARE OF THE STATE OF CONNECTICUT, AND ON BEHALF OF OTHERS SIMILARLY SITUATED, APPELLEE.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

JURISDICTIONAL STATEMENT FILED JANUARY 6, 1976

JURISDICTION NOTED FEBRUARY 19, 1976

APPENDIX

OCTOBER TERM, 1973

No. 73-6033

SHARON ROE AND DOROTHY POE, ON BEHALF OF THEMSELVES AND OTHERS SIMILARLY SITUATED, APPELLANTS

v.

NICHOLAS NORTON, INDIVIDUALLY, AS COMMISSIONER OF WELFARE OF THE STATE OF CONNECTICUT, AND ON BEHALF OF OTHERS SIMILARLY SITUATED, APPELLEE

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

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A DOCKET ENTRIES UNDER DOE v. NORTON, CIVIL NO. 15579

Date 1973	PROCEEDINGS
1/29	Complaint Request for 3-Judge Court, Affidavits of Raymond J. Kelly, Robert C. Beckman, Sally Smith, Motion for Permission to Proceed in Forma Pauperis an Order Permitting same (Blumenfeld, J.), Certificate of Counsel, Motion for Temporary Restraining Order, filed and entered at Hartford.
1/29	Order to Show Cause entered for appearance at Hartford on Feb. 13, 1973 at 2:00 P.M. Blumenfeld, J. M-2/2/73
1/29	Summons issued and together with copies of same and of Complaint, Affidavits, Motions and Orders, handed to the Marshal at Hartford for service.
2/ 5	Marshal's Return Showing Service, filed.—Summons, Complaint & OSC
2/ 7	Appearances of James M. Higgins and Michael Anthony Arcari, Asst. Attys. General entered for defendant.
2/ 8	Motion to Separate Causes of Action, Motion to Dismiss and Notice of Motion, filed by defendant at Hartford.
2/13	Plaintiffs' Brief in Support of their Motion for Temporary Relief, filed at Hartford.
2/13	Statement of Raymond J. Kelly re: Donna and Ellen Doe, filed at Hartford.
2/13	Motion for Protective Order Re: Identity of Named Plaintiffs, filed at Hartford.
2/13	Hearing on (1) Order to Show Cause; (2) Application to Convene a Three-Judge Court; (3) Defendant's Motion to Separate Causes of Action; and (4) Defendant's Motion to Dismiss. Decision Reserved on all 4 motions. Blumenfeld, J. M-2/14/73
2/21	Supplemental Memorandum in Support of Temporary Restraining Order, filed by plaintiffs.
2/26	Designation of Judges: Hon. William H. Timbers, C.J.; Hon. M. Joseph Blumenfeld, D.J.; Hon. Jon O. Newman, D.J., entered. Friendly, C.J., U.S.C.A. M-2/26/73. Copies mailed to all counsel and to 3 Judges.

Date 1973	PROCEEDINGS
2/26	Order entered in Civil Action No. 15589 consolidating that action with Civil No. 15579. Newman, J. M-2/26/73. Copies mailed to all counsel and to 3 Judges.
2/28	Ruling on Application for a Preliminary Injunction, entered. The application for a preliminary injunction is denied. However, the Court, as soon as it is designated, will expedite a hearing on the merits. So Ordered. Blumenfeld, J. Copies mailed from Hartford to all counsel. M-3/1/73. Copies to 3 Judges.
3/ 5	Copies of file in Civil Nos. 15579 and 15589 mailed to 3 Judges.
3/ 9	Substitute Complaint, filed by plaintiffs. Copies to 3 Judges.
3/ 9	Incorporation of Exhibits, filed by plaintiffs. Copies to 3 Judges.
3/12	Plaintiffs' Motion for Leave to Take Depositions by Means of a Tape Recorder, filed. Copies to 3 Judges.
3/12	Copy of Letter from Judge Newman to Attorneys David Rosen, Esq. and Edward Dolan, Esq., appointing said attorneys to represent the children and enclosing copies of court's files, filed. Copies mailed to 3 Judges Copies to counsel.
3/19	Notice of Hearing Re Plaintiffs' Motion for Leave to Take Depositions by Means of a Tape Recorder, filed. Copies to 3 Judges.
3/19	Motion to Permit Introduction of Plaintiffs' Depositions, Notice of Motion and Memorandum in Support of Motion, filed. Copies to 3 Judges.

B DONNA DOE, LINDA LOE, RENA ROE, SALLY SMITH and all others similarly situated vs. NICHOLAS NORTON, Ind. and as Commissioner of Welfare of the State of Connecticut.

3/26	(1) Plaintiff's Motion for Leave to take Depositions by Means of a Tape Recorder; (2) Plaintiff's Motion to Permit Introduction of plaintiff's Depositions—calendar endorsement as follows: "Disposed of by conference." Both motions endorsed as follows: "Off" Blumenfeld, J. M-3/27/73. Copies to all counsel.
4/16	Summary of Affidavits, filed by plaintiffs. Copies to 3 Judges.
4/16	Notice of Filing of Affidavits as Evidence, filed by plaintiffs. Copies to 3 Judges.
4/26	Plaintiff's Brief, filed. Copies to 3 Judges.
4/30	Stipulation filed at Hartford.
4/30	Motion of the Connecticut Civil Liberties Union to File Brief Amicus Curiae, filed at Hartford.
4/30	Brief on Behalf of Children, filed at Hartford.
4/30	History of the Statute, filed at Hartford.
4/30	Answer of the Defendant, filed at Hartford.
4/30	Answer of the Defendant (Civil No. 15589), filed at Hartford.
4/30	3-Judge Court Hearing on the Merits. Argument by Counsel for Plaintiffs, State (Deft.) and Children. Defendant's Exhibit A, filed. Children's Exhibits 1 thru 5 filed. Decision Reserved. Timbers, C. J.; Blumenfeld, D. J.; Newman, D. J. M-5/2/73.
5/29	Motion of "Y" to Intervene as Plaintiff, Motion for Permission to Proceed in Forma Pauperis and Affidavit, filed. Copies mailed to 3 Judges.
7/ 2	Plaintiff's Response to HEW Regulation 45 CFR Sec. 233.90, filed. Copies to 3 Judges.

PROCEEDINGS

Date 1973	
9/ 5	Memorandum of Decision Findings of Fact and Conclusions of Law, filed and entered. Application for a permanent injunction is denied and the case is dismissed. So Ordered. Timbers, U.S.C.J., Blumenfeld, U.S.D.J., Newman, U.S.D.J. M-9/6/73. Copies mailed to all counsel and 3 judges by Htfd. office. Copy to Judith Mears.
9/ 7	Judgment entered that the application for a permanent injunction is denied and that this action be dismissed. Markowski, C. M-9/7/73. Copies mailed to all counsel and to 3 Judges.
11/ 5	Notice of Appeal to the Supreme Court of the United States filed by plaintiffs. Copies to all counsel and to 3 Judges.
11/ 5	Notice of Appeal to the Supreme Court of the United States filed by children of Donna Doe, Linda Loe, Rena Roe and Sally Smith plaintiffs. Copies to all counsel and to 3 Judges.
12/ 4	Motion to Dismiss Appeal, filed by plaintiffs. Copies to 3 Judges.
12/17	Order entered on plaintiffs' Motion to Dismiss Appeal granting same. Timbers, U.S.C.J., Blumenfeld, U.S.D.J., Newman, U.S.D.J. M-12/17/73. Copies mailed to all counsel and to 3 Judges.

C DOCKET ENTRIES UNDER ROE V. NORTON, CIVIL NO. 15589

1/31	Complaint, Request for 3-Judge Court, Motion for Waiver of Fees and Order thereon granting same (Newman, J.) and Affidavits filed an entered. Summons issued and together with copies of same and of complaint, Motion, Order and Affidavits, handed to the Marshal for service. M-2/6/73
2/ 9	Application to Convene Three-Judge Court, filed by plaintiffs.
2/ 9	Motion to Seal Affidavits, filed by plaintiffs. "Motion Granted Ex Newman, M-3/5/7 Copies
2/ 7	Appearance of James M. Higgins and Michael Anthony Arcari, entered for defendant Nicholas Norton.
2/20	Hearing on Application to Convene a Three-Judge Court. Decision Reserved. Newman, J. M-2/20/73
2/26	Order entered consolidating action with Civil No. 15,579, and denying application to convene a separate three-judge court as unnecessary. Newman, J. M-2/26/73. Copies mailed to all counsel.
3/ 8	Marshal's Return Showing Service, filed.—Summons & Complaint. Make docket entries in Civil No. 15579
9/ 5	Memorandum of Decision, Findings of Fact and Conclusions of Law, filed and entered. Application for a permanent injunction is denied and the case is dismissed. So Ordered. Timbers, U.S.C.J., Blumenfeld, U.S.D.J., Newman, U.S.D.J. M-9/6/73. Copies mailed to all counsel and 3 Judges by Htf. office.
9/ 7	Judgment entered that the application for a permanent injunction is denied and that this action be dismissed. Markowski, C. M-9/7/73. Copies mailed to all counsel and to 3 Judges.
11/ 6	Notice of Appeal to the Supreme Court of the United States filed by plaintiff. Copies to all counsel.
12/28	Motion for Permission to Docket Appeal in Forma Pauperis and Affidavit, filed by Plaintiffs.

Filed ——— 31, ——— 1973

1 In the United States District Court for the District of Connecticut

Civil No. 15589

SHARON ROE, INDIVIDUALLY AND ON BEHALF OF HER DEPENDENT MINOR CHILD AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED, PLAINTIFFS

v.

NICHOLAS NORTON, INDIVIDUALLY, AS COMMISSIONER OF WELFARE OR STATE OF CONNECTICUT, AND OF BEHALF OTHERS SIMILARLY SITUATED, DEFENDANTS

Complaint

1. This is an action for declaratory and injunctive relief authorized by Title 42 U.S.C. § 1983, to redress the deprivation of rights, privileges and immunities secured to the plaintiffs and all others similarly situated by Section 1 of the Fourteenth Amendment, the First Amendment, the Fourth Amendment, the Ninth Amendent, all of the United States Constitution and the Social Security Act, Title 42 U.S.C. § 1352 *et seq.*, and regulations promulgated thereunder.

2 2. Jurisdiction is conferred on this Court by Title 28 U.S.C. § 1331 and § 1343.

3. This is a proper case for determination by a three-judge court pursuant to Title 28 U.S.C. § 2281 and § 2284, in that it seeks an injunction and declaratory judgment to restrain the defendants from applying, enforcing and implementing Connecticut General Statutes § 52-440(b) (1971 Public Act 439), on the grounds that said statute violates the right of privacy of the class of plaintiffs, and denies them equal protection of the laws. Copies of said statute and regulations issued thereunder are attached hereto and incorporated herein as Exhibits A and B.

4. Plaintiffs bring this action pursuant to Rule 23 of the Federal Rules of Civil Procedure, on behalf of themselves and all others similarly situated. A person is similarly situated if she is the mother of any child born out of wedlock or the mother of any child born to any married woman during marriage, which child shall be found not to be issue if the marriage by any court of competent jurisdiction.

The persons in the class are so numerous as to make joinder impracticable; there are common questions of law and fact; plaintiffs' claims are typical of the claims of the class; and the representative plaintiffs will fairly and adequately protect the interests of the class. The parties opposing the claims have acted or refused to act on grounds generally applicable to the class.

3 5. Sharon Roe and Dorothy Roe are the pseudonyms of real persons, members of the class, adult citizens of the United States of Connecticut and residents of the City of New Haven; they and their families receive benefits under the Aid to Families with Dependent Children (AFDC) by the Connecticut State Welfare Department.

6. Defendant Nicholas Norton, is Commissioner of Welfare of the State of Connecticut, and in said capacity is charged with administering the welfare laws of the State of Connecticut. His claims and defenses which would be available to the selectment of any town and of any guardiano ad litem of children appointed by any court of competent jurisdiction, all persons empowered to act under C.G.S. § 52–440(b).

7. Plaintiffs Sharon Roe and Dorothy Roe are recipients of assistance under the Aid to Families with Dependent Children Program operated by defendant Nicholas Norton. Each has given birth to a child who is not issue of a marriage, and each has been served with a citation prepared by his agent Sheldon Messinger under the authority of C.G.S. § 52–440(b). The Circuit Court has not disposed of said citations to the date hereof.

8. To the date hereof, each named plaintiffs has refused to disclose the name of the putative father of her children, claiming that her right to privacy makes such information privileged.

4 Unless enjoined by this Court from doing so, each of the plaintiffs will be forced to choose between her privacy and being found in contempt of court.

9. If either plaintiff is found in contempt of court, imprisonment for up to one year could follow; in all probability dismemberment of their families and consequent termination of the plaintiffs eligibility under the AFDC program would result.

COUNT I

The allegations of paragraphs 1 through 9 are incorporated herein by reference, the same as though pleaded herein in full.

10. Connecticut General Statutes § 52–440(b) and the regulations issued by the Connecticut State Welfare Department violate plaintiffs right to privacy guaranteed by the First, Fourth, Ninth and Fourteenth Amendments to the United States Constitution.

COUNT II

The allegations of paragraphs 1 through 9 are incorporated herein by reference, the same as though pleaded herein in full.

11. The defendant welfare commissioner was enjoined from creating an additional condition of eligibility for Aid to Families with Dependent Children through the use of a requirement that a mother name the putative father of her illegitimate child; *Doe* v. *Shapiro*, 302 F. Supp. 761 (D. Conn. 1969), appeal dismissed, 396 U.S. 488 rehearing denied, 397 U.S. 970 and *Doe* v. *Harder*, 310 F. Supp. 302 (1969).

12. The practices and policies of the Connecticut State Welfare Department pursuant to Section 52–440(b) Connecticut General Statutes violate the following sections of the

5 Social Security Act of 1935 and related regulations in the following specifics:

a. 42 C.F.R. 250.50(a) and 42 U.S.C.A. 602 which protect public assistance recipients from the public disclosure of confidential information.

b. 42 U.S.C.A. 602(a)(9), 42 C.F.R. 206.10(a)(10) which requires that standards and methods for the determination of eligibility "will not result in practices that violate the individual's privacy or personal dignity or harass him."

c. 42 U.S.C.A. 601 and 42 U.S.C.A. 602(a)(14) requiring encouragement of the care of dependent children in their own or relative's homes, to help maintain and strengthen family life, and to continue parental care and protection. *See also*, 42 C.F.R. 220.16 and related sections.

13. The practices and policies of the Connecticut State Welfare Department pursuant to Section 52–440(b) Connecticut General Statutes are not saved by or in compliance with 42 U.S.C.A. 602(a)(17) which requires the development of an agency program to establish paternity and support for AFDC children born out of wedlock since:

a. C.G.S. § 52–440(b) and the regulations issued thereunder do not comply with other provisions of the Social Security Act as detailed paragraph 12 *supra*.

b. C.G.S. § 52–440(b) is not part of a general plan which has been submitted for approval under said subsection.

c. The 42 U.S.C.A. 602(a)(17) requirement of a single agency organizational unit responsible for such a plan has not been met.

d. C.G.S. § 52–440(b) threatens to remove the mother from the household in violation of the purposes of Title 42 U.S.C. § 602(a)(17).

COUNT III

The allegations of paragraphs 1 through 9 of the complaint are hereby incorporated by reference, the same as though pleaded in full.

14. C.G.S. § 52–440(b) does not affect mothers or children born out of wedlock unless such persons are recipients of assistance from the State Welfare Department or general assistance.

15. Said statute invades the privacy of persons receiving such assistance, hereby denying them the equal protection of the laws guaranteed by the Fourteenth Amendment to the United States Constitution.

Wherefore: Plaintiffs respectfully pray, on behalf of themselves, their minor children and all others similarly situated, that this court:

1. Assume jurisdiction of this claim, convene a three-judge district court pursuant to Title 28 U.S.C. Section 2281 to determine this controversy and set this case down for a prompt hearing:

2. Certify, pursuant to Rule 23 F.R.C.P. that this claim may proceed as a class action;

3. Pending a hearing and determination by a three-judge court, grant temporary relief pursuant to 28 U.S.C. Section 2284(3) restraining defendants, their successors in office, agents and employees and all other persons acting in concert and participation with them from causing irreparable harm to plaintiffs by acting pursuant to Section 52–440(b) Connecticut General Statutes and related policies and practices.

4. Enter preliminary and permanent injunctions, pursuant to Rule 65 F.R.C.P. enjoining the defendant, his successors in in office, agents and employees from causing irreparable harm to plaintiffs by acting pursuant to Section 52–440(b) Connecticut General Statutes and related departmental policies and practices.

5. Enter final judgment declaring Section 52–440(b) of the Connecticut General Statutes and all related state policy and practices invalid under the First, Fourth, Fifth, Ninth and Fourteenth Amendments, the Social Security Act of 1935 and violative of regulations promulgated pursuant to the Social Security Act of 1935.

6. Pursuant to Rule 54(d) F.R.C.P., grant plaintiffs such additional relief, including payment of all monies wrongfully withheld, as this Court may deem just, proper, and equitable.

7. Such other and further relief as law and equity may provide.

The Plaintiffs:
(S) FRANK COCHRAN,
795 Grand Avenue,
New Haven, Connecticut 06511
(203)–777–5428.
Their Attorney,

Certification (omitted in printing)

EXHIBIT A

Sec. 52–440b. Compelling disclosure of name of putative father and institution of action. (a) If the mother of any child born out of wedlock, or the mother of any child born to any married women during marriage which child shall be found not to be issue of the marriage terminated by a divorce decree or by decree of any court of competent jurisdiction, fails or refuses to disclose the name of the putative father of such child under oath to the welfare commissioner, if such child is a recipient of public assistance, or to a selectman of a town in which such child resides, if such child is a recipient of general assistance, or otherwise to a guardian or a guardian ad litem of such child, such mother may be cited to appear before any judge of the circuit court and compelled to disclose the name of the putative father under oath and to institute an action to establish the paternity of said child.

(b) Any woman who, having been cited to appear before a judge of the circuit court pursuant to subsection (a), fails to appear or fails to disclose or fails to prosecute a paternity action

may be found to be in contempt of said court and may be fined not more than two hundred dollars or imprisoned not more than one year or both.

(1971, P.A. 439, S. 4.)

10 EXHIBIT B

(Connecticut State Welfare Department Social Service Policies—Public Assistance: Manual Vol. 1, Effective 8–1–72)

ELIGIBILITY PROVISIONS—CHILD BORN OUT OF WEDLOCK—3460.22

3460.22 RESPONSIBILITY FOR SUPPORT AND ESTABLISHMENT OF PATERNITY

If the mother decides to keep the child or to place him in a relative's home, both parents are responsible for support and proceedings for the establishment of paternity are initiated. Information about the alleged father is obtained from the mother of the child. If he resides in the State, an interview is held to discuss the situation and to secure his Acknowledgement of Paternity.

The mother is encouraged to name the father, by Affirmation of Paternity, under oath and to file a petition to establish paternity and support.

If the mother is unwilling or unable to name the father, she is still eligible for assistance to meet *her own needs, the needs of the child in question, and the needs of any other children in the family*, provided all other eligibility requirements are met; however, if she is *unwilling* to *name the father*, she is informed that she is subject to be cited to appear before any judge of the Circuit Court, be compelled to name the putative father and to institute an action to establish paternity of the child.

In all situations, assistance is granted promptly when all eligibility requirements are met, whether or not Court action is pending to establish paternity or to secure support.

In situations where the mother names the father, but then is unwilling or neglects to file a petition or to pursue a petition she started, the Department, under Section 52–440a of the Connecticut Statutes, institutes such proceeding. In this instance, the mother may be subpoenaed to testify and treated as a hostile witness.

11 2. *Paternity Not Alleged by the Mother*

a. If the mother is unwilling to name the putative father she is informed by the worker that she will be cited to appear before any judge of the Circuit Court and compelled to disclose the name of the putative father and to institute an action to establish the paternity of the child. The worker refers the matter to the Resource worker on a Form W–109. Central Office will provide a list of attorneys to each Resource Unit; referral will be made to an attorney on the list for the purpose of citing the mother to appear before the Court. The fee for this service will be $75 if the mother names the father after the attorney prepares the petition and prior to a court hearing and $150 if the matter goes to a full hearing before the Court. The same fee prevails regardless of the number of children and/or fathers involved. If, after the hearing, the mother decides to cooperate and initiate the paternity action herself, she is of course free to contact an attorney of her own choice. A fee schedule has been established for attorney's fees in connection with paternity proceedings when the mother has named the father (see Index No. 3460.24). If she refuses to cooperate, the Department will initiate a paternity action under the terms of Section 52–440a (see Index No. 3460.1). The same attorney who cited the mother into court will be used to bring the paternity action in such cases.

b. When paternity is established and the Court has determined the amount of support to be paid, payments are made to the Department of Finance and Control and the State Welfare Department meets the continuing needs of the eligible members fully.

c. If the mother is *unable* to name the putative father, this is recorded in the case record.

3. *Referral to the Circuit Court*

When the hospital cost has been paid by the Department, the worker directs a memorandum to the Medical Payments Section, Central Office, requesting a statement of hospital charges.

The worker then forwards the following to the liaison worker of the Resources Unit by means of a Form W–109 for referral to the Circuit Court in which the mother resides:

a. The executed Form W–161, "Acknowledgement of Paternity and Affirmation of Paternity";

12 b. The amount of hospital charges;

c. Form W–326, "Referral to the Family Relations Division of the Circuit Court";

d. The amount of assistance paid for the care of the child in question;

e. Pertinent information regarding the acknowledged father's financial circumstances.

4. *Support Payments*

When paternity is established and the Court has determined the amount of support to be paid, payments are made to the State and the Department meets the continuing need of the eligible members fully.

Effective 8–1–72

13 Filed, February 26, 1973

In the United States District Court for the District of Connecticut

Designation of Judges

Civil No. 15,579

DONNA DOE, LINDA LOE, RENA ROE, SALLY SMITH AND ALL OTHERS SIMILARLY SITUATED, PLAINTIFFS

v.

NICHOLAS NORTON, INDIVIDUALLY, AND AS COMMISSIONER OF WELFARE OF THE STATE OF CONNECTICUT, DEFENDANT

Having been notified by the Honorable M. Joseph Blumenfeld, Chief Judge, United States District Court for the District of Connecticut, that an application has been filed in the above matter for relief pursuant to 28 U.S.C. §§ 2281 and 2284, I hereby designate the following judges, in addition to the Honorable M. Joseph Blumenfeld, to hear and determine said cause as provided by law: Honorable William H. Timbers, United States Circuit Judge, United States Court of Appeals for the Second Circuit, and Honorable Jon O. Newman, United States

District Judge, United States District Court for the District of Connecticut.

IT IS HEREBY ORDERED that this order be filed in the above matter in the United States District Court for the District of Connecticut.

/s/ HENRY J. FRIENDLY,
Chief Judge,
United States Court of Appeals, Second Circuit.

New York, N.Y., February 20, 1973.

14 In the United States District Court for the District of Connecticut

Civil No. 15,589

SHARON ROE AND DOROTHY POE, INDIVIDUALLY AND ON BEHALF OF OTHERS SIMILARLY SITUATED

v.

NICHOLAS NORTON, INDIVIDUALLY AND AS COMMISSIONER OF WELFARE OF THE STATE OF CONNECTICUT, AND ON BEHALF OF OTHERS SIMILARLY SITUATED

Order for Consolidation

Plaintiffs seek the convening of a three-judge court pursuant to 28 U.S.C. § 2281 in a suit challenging, on constitutional and statutory grounds, the enforcement of Conn. Gen. Stat. § 52–440(b), Public Act 439, 1971. Since a three-judge court has already been convened in *Doe* v. *Norton*, Civ. No. 15,579, to consider the same claims raised by these plaintiffs, this action is hereby ordered consolidated with Civ. No. 15,579, and the application to convene a separate three-judge court for Civ. No. 15,589 is denied as unnecessary as a result of the consolidation.

Dated at New Haven, Connecticut, this 26th day of February, 1973.

(S) JON O. NEWMAN,
United States District Judge.

15 In the United States District Court for the District of Connecticut

Civil No. 15,579

DONNA DOE, ET AL.
v.
NICHOLAS NORTON, INDIVIDUALLY, AND AS COMMISSIONER OF WELFARE OF THE STATE OF CONNECTICUT

Ruling on Application for a Preliminary Injunction

The plaintiffs,[1] all allegedly eligible to receive public assistance from the Connecticut State Welfare Department, have initiated this suit to challenge the constitutionality of
16 Conn. Gen. Stats. § 52–440b.[2] This statute is part of a comprehensive statutory scheme whereby the mother of any illegitimate child may be compelled by the appropriate authorities to disclose the name of the child's putative father, and to institute a paternity action. Failure to comply with this statute may result in a fine of not more than $200 and/or imprisonment for not more than one year. The defend-

[1] Because of the special circumstances of this case, plaintiffs sue under fictitious names. They are all mothers of illegitimate children who sue on their own behalf as well as on behalf of their minor children.

[2] Conn. Gen. Stats. § 52–440b provides:

"(a) If the mother of any child born out of wedlock, or the mother of any child born to any married woman during marriage which child shall be found not to be issue of the marriage terminated by a divorce decree or by decree of any court of competent jurisdiction, fails or refuses to disclose the name of the putative father of such child under oath to the welfare commissioner, if such child is a recipient of public assistance, or to a selectman of a town in which such child resides, if such child is a recipient of general assistance, or otherwise to a guardian or a guardian ad litem of such child, such mother may be cited to appear before any judge of the circuit court and compelled to disclose the name of the putative father under oath and to institute an action to establish the paternity of said child.

"(b) Any woman who, having been cited to appear before a judge of the circuit court pursuant to subsection (a), fails to appear or fails to disclose or fails to prosecute a paternity action may be found to be in contempt of said court and may be fined not more than two hundred dollars or imprisoned not more than one year or both."

ant is the Commissioner of Welfare, Nicholas Norton, sued in his individual and representative capacity.

The plaintiffs allege that, as applied to them, this statute violates their constitutional rights to equal protection, due process, and privacy, and is inconsistent with and contravenes the underlying policies of the Social Security Act, 42 U.S.C. §§ 601 et seq. They rely upon the Civil Rights Act, 42 U.S.C. § 1983, for a cause of action, and upon 28 U.S.C. § 1343(3) for this court's jurisdiction. They seek the convocation of a three-judge district court, 28 U.S.C. § 2281; preliminary injunctive relief, 28 U.S.C. § 2284; certification of the suit as a class action, Fed. R. Civ. P. 23; and declaratory and permanent injunctive relief.

17 I

THREE-JUDGE DISTRICT COURT

Because these plaintiffs seek to restrain the operation of a state statute, this case can only be decided by a district court of three judges, 28 U.S.C. § 2281, unless their claim is insubstantial. *Ex parte Poresky*, 290 U.S. 30 (1934). The Supreme Court has recently reiterated the limited power of a district judge to dismiss as insubstantial a claim otherwise appropriate for consideration by three judges:

> A claim is insubstantial only if "its unsoundness so clearly results from the previous decisions of this Court as to foreclose the subject and leave no room for the inference that the question sought to be raised can be the subject of controversy." *Goosby* v. *Osser*, 41 U.S.L.W. 4167, 4169 (Jan. 17, 1973) (citations omitted).

There is little doubt that the constitutional claims herein presented are not "insubstantial." [3] Accordingly, a three-judge district court will be convened to adjudicate the merits of this case.

The motion to certify the class action aspect of this case will be reserved for the three-judge district court.

[3] Counsel for defendant Norton does not contest the need for a three-judge district court.

18

II

Preliminary Relief

It does not follow from the determination that the constitutional questions herein presented are not so "insubstantial" as to foreclose the need for a three-judge district court to resolve them that the plaintiffs have demonstrated that they are entitled to preliminary injunctive relief. The standard which informs the exercise of judicial discretion in the award of preliminary relief focuses on different considerations.

Though the defendant contests the propriety of preliminary injunctive relief in this case, the parties do not dispute the applicable standard which controls the proper resolution of this facet of the dispute. In this circuit, it is settled that:

> (t)he purpose of a preliminary injunction is to maintain the status quo pending a final determination of the merits. It is an extraordinary remedy, and will not be granted except upon a clear showing of probable success *and* possible irreparable injury. However, "the burden (of showing probable success) is less where the balance of hardships tips decidedly toward the party requesting the temporary relief." In such a case, the moving party may obtain a preliminary injunction if he has raised questions going to the merits so serious, substantial, and difficult as to make them a fair ground for litigation and thus for more deliberate investigation. *Checker Motors Corp.* v. *Chrysler Corp.*, 405 F. 2d 319, 323 (2d Cir.), *cert. denied*, 394 U.S. 999 (1969).

19 The elements on which the issuance of a temporary injunction depends will be considered separately.

A. PROBABLE SUCCESS ON THE MERITS

Since factual issues are minimal, the clear showing which the plaintiffs are required to make is that they will prevail on the issues of law which are presented by this case. In order to determine what they are, it will be helpful to delineate first what is not involved.

Despite the plaintiffs' facile invocation of the constitutional rights to equal protection and due process, it does not appear that the operation of this statute violates those constitutional

rights. Their resort to the fifth amendment's protection against self-incrimination would similarly appear to be of no avail. For any action taken under the statute, immunity from criminal prosecution is granted to both the mother and the putative father for *any* act about which either testifies in such proceedings, or for any statement made with respect to paternity prior to such proceedings. Conn. Gen. Stats. §§ 52–435b, 435c.

Nor are the statutory rights of the plaintiffs to welfare benefits jeopardized by the operation of this statute. A three-judge district court in this district has held that the state may not withhold AFDC benefits to an otherwise qualified child, *Doe* v. *Shapiro*, 302 F. Supp. 761 (D. Conn. 1969), *appeal*

20 *dismissed*, 396 U.S. 488, *rehearing denied*, 397 U.S. 970 (1970), or to his [4] mother, *Doe* v. *Harder*, 310 F. Supp. 302 (D. Conn.), *appeal dismissed*, 399 U.S. 902 (1970), because of a mother's refusal to comply with state regulations [5] requiring her to reveal the name of the child's father or to participate in paternity proceedings against him. That issue is well settled. See cases cited in *Saiz* v. *Hernandez*, 340 F. Supp. 165, 166 (D. N.Mex. 1972). With these threats to the eligibility of the plaintiffs to receive welfare benefits removed from the case, the only discernable interest which remains, and what the plaintiffs singled out in argument at the hearing as having alleged constitutional significance, is founded on the desire of each mother to keep secret the name of her child's father.

That a constitutional right of personal privacy exists

21 is not contested. Recent cases, e.g., *Griswold* v. *Connecticut*, 381 U.S. 479 (1965), demonstrate that

> (although) (t)he Constitution does not explicitly mention any right of privacy . . . (there is) a line of decisions . . . (wherein) the Court has recognized that a right of personal privacy, or a guarantee of certain areas

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[4] For convenience, the masculine gender is used to refer to children of either sex.

[5] See Connecticut State Welfare Department Social Service Policies—Public Assistance: Manual Vol. 1, Index No. 3460.22 which presently provides:

"If the mother is unwilling or unable to name the father, she is still eligible for assistance to meet her own needs, the needs of the child in question and the needs of any other children in the family providing all other eligibility requirements are met; . . ."

See also, Welfare Department Memoranda dated April 12, 1972, January 6, 1973, and February 13, 1973, reiterating this policy.

> or zones of privacy, does exist under the Constitution. . . . These decisions make it clear that only personal rights that can be deemed "fundamental" or "implicit in the concept of ordered liberty," are included in this guarantee of personal privacy. They also make it clear that the right has some extension to activities relating to marriage, procreation, contraception, family relationships, and child rearing and education. *Roe* v. *Wade*, 41 U.S.L.W. 4213, 4225 (Jan. 22, 1973) (citations omitted).

What is protected is the individual's personal right to privacy, notwithstanding the fact that by its very nature the exercise of the right may require the par' ipation of another individual. Accordingly in striking dow[illegible]hibition on the access to the use of contraceptive devices as a denial of equal protection the Court in *Eisenstadt* v. *Baird*, 405 U.S. 438, 453 (1972), noted:

> If the right of privacy means anything, it is the right of the *individual*, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child. (citation omitted).

Thus, the constitutional question presented is whether at this time a mother's desire to keep the name of the child's father secret is so "fundamental" or "implicit in the concept of ordered liberty" as to require constitutional protection. *Roe* v. *Wade*, *supra*, 41 U.S.L.W. at 4225. The contention of each plaintiff mother is that, because her participation in legal action to establish the paternity of her child may result in additional strains in family relationships within the home, or may unwisely force the permanent severance of relationships with his father, her right to decide for herself whether a paternity action should be brought is so "fundamental" as to be included in the constitutional guarantee of personal privacy. This contention calls for further examination.

The rights of a person arising out of a family relationship are necessarily interrelated with those of other members of the family. Whatever interest a mother may have in not disclosing her knowledge of the identity of her child's father is intertwined with, and has a material effect upon, the interests of her child. To discern more accurately the nature of a mother's interest, it will be helpful to distinguish it from those of her child.

Some light is thrown upon the particular interest of the child by the way in which our society considers the plight of a child who has not been acknowledged by his father. Rather than branding it as manifestly evil, a theme which one must be prepared to concede is subject to the influences of changing social trends, the child's relationship to his unnamed father has been imbued with a sense of responsibility. The responsibility of a father to support his child, and a cause of action to enforce that responsibility, have existed in Connecticut from its earliest days.[4] In obtaining support for their children, the plaintiffs do not hesitate to disclose publicly to the state and others that their children are illegitimate. At the same time, they argue that the failure to disclose the name of the father brings strength to the family, although that will shield the father against his obligation to support his own child. There is an inconsistency here in keeping two contradictory ideas in play at the same time.

The legitimate children in the family unit, if any there are, are not disadvantaged, for they still have their father to look to for support. Whatever unique stigmata of suffering may be carried by a child because he has been denied the same charter that the other children in the family take from birth may not be wholly relieved by disclosure of the name of his father; but if paternity is not established, he is subjected to the additional risk that he will be forever deprived of many rights he is qualified to receive, even though an illegitimate child of his father. Except for special situations, e.g., to insure noble lineage and the stability of titles, and the prompt and definitive determination of valid distribution of property left by decedents, *Labine* v. *Vincent*, 401 U.S. 532 (1971), the trend of the law is to separate the label "illegitimate" from the word "child" to prevent their exclusion from benefits to children. E.g., *Weber* v. *Aetna Cas. & Sur. Co.*, 406 U.S. 164 (1971) (workmen's compensation benefits); *Glona* v. *American Guarantee & Liab. Ins. Co.*, 391 U.S. 73 (1968) (wrongful death statute); *Levy* v. *Louisiana*, 391 U.S. 68 (1968) (wrongful death statute); *Davis* v. *Richardson*, 342 F. Supp. 588 (D. Conn.) (3-Judge District Court), *aff'd*, 41 U.S.L.W. 3345 (1972)

[4] In addition to this responsibility, it is not amiss to note that history and literature are replete with examples of the anguish suffered by illegitimate children denied the satisfaction of knowing their parternity. See, e.g., *The Right of Illegitimates Under Federal Statutes*, 76 Harv. L. Rev. 337 (1962). Three bastardy actions are reported in the first volume of Connecticut's Reports. See Vol. 1 of Root's Reports 1789–98.

(social security death benefits); *Ballentine* v. *DeSylva*, 226 F. 2d 623 (9th Cir. 1955) (copyright statute); *Middletown* v. *Luchenbach S.S. Co.*, 70 F. 2d 326 (2d Cir.), *cert denied*, 293 U.S. 577 (1934) (death on the high seas, "children" includes illegitimates); *Turner* v. *Metropolitan Life Ins. Co.*, 56 Cal. App. 2d 862, 133 Pac. 2d 859 (1943) ("children" in life insurance policy includes illegitimate children). In all of the foregoing cases the interest of the father was only tangential to that of his illegitimate child, for the benefit to the child was not at the expense of his father. But in *Gomez* v. *Perez*, 41 U.S.L.W. 4174 (Jan. 17, 1973), where the same interest of the father as in these
25 cases was at stake, the Supreme Court held that it was a denial of equal protection for a state to exclude illegitimate children from the obligation of a father to support his children.

Assuming, arguendo, that the enforced disclosure by the plaintiffs of the names of the fathers of their illegitimate children results in an injury which is irreparable, the foregoing analysis of the relative rights of the members of their families persuades me that they have not made a sufficiently clear showing of probable success on the merits as to warrant preliminary injunctive relief under the traditional standard. However, since they have "raised questions going to the merits so serious, substantial, and difficult as to make them a fair ground for litigation . . .," I turn next to consider whether the balance of hardships tips so decidedly toward them as nonetheless to warrant the extraordinary relief of a preliminary injunction. *Checker Motors Corp.* v. *Chrysler Corp., supra*, 405 F. 2d at 323.

B. BALANCE OF HARDSHIPS

In balancing the hardships, it must be remembered that

> (t)he requirement that a party seeking a preliminary injunction demonstrate that it will suffer irreparable harm in the absence of preliminary relief necessitates more than a mere showing that the party seeking
> 26 relief will see its relative position deteriorate. Preliminary injunctive relief is extraordinary relief. It requires a convincing demonstration that the balance of hardships tips decidedly toward the moving party. *Sanders* v. *Air Line Pilots Assoc. Int'l*, Dkt. No. 72–1878 (2d Cir., Dec. 4, 1972), slip op. at 715, 722 (citations omitted).

Normally the court is called upon to balance the harm which a plaintiff will suffer if an injunction is not granted against the harm that a defendant will sustain if it is. More is involved here. There are special circumstances in this case which make a great difference in considering hardships. As already indicated, the "right of privacy" is invoked by the plaintiff mothers to protect their desire to keep secret the name of their children's father lest its disclosure have some adverse effect upon future relationships within the home. Not every one will agree on what are good amenities and conduct in such a situation. But if the family is to be taken into account, and it must be, hardship to the child cannot be left out of consideration.

As noted above, these children stand to reap significant benefits if paternity is established.

When the effect of the continued denial of the right to substantial benefits accorded to children generally is balanced against the effect which disclosure of the name of a child's father will have on any future relationships with him, the hardships fall more heavily on the child than on his
27 mother.

Another factor militating against the grant of a preliminary injunction is the presence of a statute of limitations which provides that a paternity suit must be brought within three years from the date of the child's birth.[7] Once the third birthday of a child has passed without action, the name of his father may never be disclosed to him. Even if it is disclosed thereafter, years may go by before there is an opportunity to make a claim to a benefit derived through his father, and the more stale such a claim is the more difficult it will be to prove it. The problems with respect to proof of paternity are formidable in any case.

For the foregoing reasons, the application for a preliminary injunction is denied. However, the court, as soon as it is designated, will expedite a hearing on the merits.

SO ORDERED.

Dated at Hartford, Connecticut, this 27th day of February, 1973.

(S) M. JOSEPH BLUMENFELD,
Chief Judge.

[7] The plaintiffs suggest that a temporary injunction by this court would effectively toll the state's statute of limitations, but they have not furnished the court with any authority to support that proposition.

28 In the United States District Court for the District of Connecticut

Civil No. 15,579

DONNA DOE, ET AL., ON BEHALF OF THEMSELVES AND OTHERS SIMILARLY SITUATED, PLAINTIFFS

v.

NICHOLAS NORTON, INDIVIDUALLY AND AS COMMISSIONER OF WELFARE OF THE STATE OF CONNECTICUT, DEFENDANT

Civil No. 15,589

SHARON ROE, ET AL., ON BEHALF OF THEMSELVES AND OTHERS SIMILARLY SITUATED, PLAINTIFFS

v.

NICHOLAS NORTON, INDIVIDUALLY AND AS COMMISSIONER OF WELFARE OF THE STATE OF CONNECTICUT, AND ON BEHALF OF OTHERS SIMILARLY SITUATED, DEFENDANT

Substitute Complaint—Filed March 9, 1973

1. This is an action for declaratory and injunctive relief authorized by Title 42 U.S.C. § 1983, to redress the deprivation of rights privileges and immunities secured to the plain-
29 tiffs and all others similarly situated, by Section 1 of the Fourteenth Amendment, the First Amendment, the Fourth Amendment, the Eighth Amendment and the Ninth Amendment, all of the United States Constitution, and the Social Security Act, Title 42 U.S.C. § 1352 *et seq.*, and regulations promulgated thereunder.

2. Jurisdiction is conferred on this Court by Title 28 U.S.C. § 1331 and § 1343.

3. This is a proper case for determination by a three-judge court pursuant to Title 28 U.S.C. § 2281 and § 2284, in that it seeks an injunction and declaratory judgment to restrain the defendants from applying, enforcing and implementing Connecticut General Statutes § 52–440(b) (1971 Public Act 439), on the grounds that said statute violates the right of privacy of the class of plaintiffs, and denies them equal protection of the laws, and constitutes a cruel and unusual punishment. Copies

of said statute and regulations issued thereunder are attached hereto and incorporated herein as Exhibit A.

4. The named plaintiffs bring this action pursuant to Rule 23 of the Federal Rules of Civil Procedure, on behalf of themselves, their minor children, and all others similarly situated. A person is similarly situated if she is the mother of any child born out of wedlock or the mother of any child born to any married woman during marriage, which child shall be found not to be issue of the marriage by any court of competent jurisdiction.

The persons in the class are so numerous as to make joinder impracticable; there are common questions of law and fact; plaintiffs' claims are typical of the claims of the class;
30 and the representative plaintiffs will fairly and adequately protect the interests of the class. The parties opposing the class have acted or refused to act on grounds generally applicable to the class, thereby making appropriate final declaratory and injunctive relief with respect to the class as a whole.

5. a. The plaintiffs, Donna Doe, Linda Loe, Rena Roe, Sally Smith, Sharon Roe and Dorothy Poe and their children are all eligible to receive public assistance benefits from the Connecticut State Welfare Department.

b. Plaintiff Donna Doe and the subclass of persons she represents have been refused or have been threatened with refusal of public assistance for failure to comply with Section 52–440(b) of the Connecticut General Statutes.

c. The dependent children of plaintiffs Linda Loe, Rena Roe, Sally Smith, Sharon Roe and Dorothy Poe, are in danger of having their parental care eliminated by the welfare department by virtue of a court citation subjecting their mothers to a maximum penalty of one year's imprisonment under Section 52–440(b) of the Connecticut General Statutes.

d. Each plaintiff is a resident of the State of Connecticut.

e. The plaintiffs' Affidavits, attached to the Complaint as Exhibits B, C, D, and E and incorporated herein by reference as if they were fully pleaded, detail their individual factual situations and the effects of the defendant's policies upon them.

31 6. Defendant Nicholas Norton, is Commissioner of Welfare of the State of Connecticut, and in said capacity is charged with administering the welfare laws of the

State of Connecticut. His claims and defenses which would be available to the selectmen of any town and of any guardian ad litem of children appointed by any court of competent jurisdiction, the class of persons empowered to act under C.G.S. § 52–440(b).

7. Plaintiffs Sharon Roe and Dorothy Poe are recipients of assistance under the Aid to Families with Dependent Children Program operated by defendant Nicholas Norton. Each has given birth to a child who is not issue of a marriage, and each has been served with a citation prepared by his agent Sheldon Messinger under the authority of C.G.S. § 52–440(b). The Circuit Court has not disposed of said citations to the date hereof.

8. The defendant welfare commissioner, through private counsel retained by the welfare department, has notified Linda Loe and Rena Roe that they will be subjected to court citation which would make them vulnerable to possible imprisonment and fine for their failure to name their children's putative father. (See the department's notifications to the mothers. Exhibits F and G.)

9. To the date hereof, each of said named plaintiffs has refused to disclose the name of the putative father of her child, claiming it is in the best interests of both mother and child not to make the disclosure. Unless enjoined by this Court from doing so, each of the plaintiffs will be forced to choose between doing what she feels in the best interests of the family and being found in contempt of court.

32 10. The defendant welfare commissioner, through private counsel retained by the welfare department, has notified Sally Smith that she will be subjected to court citation and possible imprisonment for her failure to sign an acknowledgement of paternity form with the previously divulged name of her child's putative father. (See department's notification. Exhibit I.)

11. If any of these named plaintiffs is found in contempt of court, imprisonment for up to one year could follow; in all probability dismemberment of their families and consequent termination of the plaintiffs eligibility under the AFDC program would result.

COUNT I

The allegations of paragraphs 1 through 11 are incorporated herein by reference, the same as though pleaded herein in full.

12. In the event that plaintiffs Linda Loe, Rena Roe, Sally Smith, Sharon Roe and Dorothy Poe are compelled to testify in the Circuit Court, each of them may be asked any and all details of her sexual conduct, may be questioned about her relationship with the putative father, may be forced to institute a paternity action or to testify in such an action brought by the Commissioner of Welfare; all of said possibilities being public record.

13. Connecticut General Statutes § 52–440(b) and the regulations issued under it remove members of the plaintiff class from the position of determining the best interests of
33 their children without requiring as a precondition, an individual due process hearing and finding that the child's interests are being neglected by the plaintiffs.

14. Connecticut General Statutes § 52–440(b) is not restricted in application to those cases in which it may be possible subsequently to bring a paternity action.

15. Connecticut General Statutes § 52–440(b) and the regulations issued by the Connecticut State Welfare Department violate plaintiffs right to privacy guaranteed by the First, Fourth, Ninth and Fourteenth Amendments to the United States Constitution.

COUNT II

The allegations of paragraphs 1 through 14 are incorporated herein by reference, the same as though pleaded herein in full.

16. Connecticut General Statutes § 52–440(b) and the regulations issued by the Connecticut State Welfare Department constitute a cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution as applied to the states by the Fourteenth Amendment.

COUNT III

The allegations of paragraphs 1 through 11 are incorporated herein by reference, the same as though pleaded herein in full.

17. The practices and policies of the Connecticut State Welfare Department pursuant to Section 52–440(b) Connecticut General Statutes violate the Social Security Act of 1935 and related regulations in the following specifics:

a. 42 C.F.R. 250.50(a) and 42 U.S.C.A. 602 which protect public assistance recipients from the public disclosure of confidential information.

34 b. 42 U.S.C.A. 602(a)(9), 42 C.F.R. 206.10(a)(10) which requires that standards and methods for the determination of eligibility "will not result in practices that violate the individual's privacy or personal dignity or harass him."

c. 42 U.S.C.A. 601 and 42 U.S.C.A. 602(a)(14) requiring encouragement of the care of dependent children in their own or relative's homes, to help maintain and strengthen family life, and to continue parental care and protection. See also, 42 C.F.R. 220.16 and related sections.

d. The department is creating an additional condition of eligibility for mothers of dependent children who refuse to name putative fathers.

e. The 42 U.S.C.A. 602(a)(17) requirement of a single agency organizational unit responsible for such a plan has not been met.

f. C.G.S. § 52–440(b) threatens to remove the mother from the household inviolation of the purposes of Title 42 U.S.C. § 60.

COUNT IV

The allegations of paragraphs 1 through 11 are hereby incorporated by reference, the same as though pleaded herein in full.

18. C.G.S. § 52–440(b) has not been applied to and was not intended to apply to mothers of children born out of wedlock unless such persons are recipients of assistance from the State Welfare Department or general assistance.

35 19. Said statute invades the privacy of persons receiving such assistance, hereby denying them the equal protection of the laws guaranteed by the Fourteenth Amendment to the United States Constitution.

COUNT V

The allegations of paragraphs 1 through 11 are hereby incorporated by reference the same as though pleaded herein in full.

20. C.G.S. § 52–440b creates an irrebutable presumption that failure or refusal of a plaintiff mother to disclose the identity of her child's father is not in the best interests of the child, when in fact such disclosure may or may not be in the child's best interest. Said presumption violates the Due Process clause of the Fourteenth Amendment to the United States Constitution.

36 WHEREFORE:

Plaintiffs respectfully pray, on behalf of themselves, their minor children an all others similarly situated, that this court:

1. Assume jurisdiction of this claim, convene a three-judge district court pursuant to Title 28 U.S.C. Section 2281 to determine this controversy and set this case down for a prompt hearing:

2. Certify, pursuant to Rule 23 F.R.C.P. that this claim may proceed as a class action;

3. Pending a hearing and determination by a three-judge court, grant temporary relief pursuant to 28 U.S.C. Section 2284(3) restraining defendants, their successors in office, agents and employees and all other persons acting in concert and participation with them from causing irreparable harm to plaintiffs by acting pursuant to Section 52–440(b) Connecticut General Statutes and related policies and practices.

4. Enter preliminary and permanent injunctions, pursuant to Rule 65 F.R.C.P. enjoining the defendant, his successors in office, agents and employees from causing irreparable harm to plaintiffs by acting pursuant to Section 52–440(b) Connecticut General Statutes and related departmental policies and practices.

5. Enter final judgment declaring Section 52–440(b) of the Connecticut General Statutes and all related state policy and practices invalid under the First, Fourth, Fifth, Ninth and Fourteenth Amendments, the Social Security Act of 1935 and violative or regulations promulgated pursuant to the Social Security Act of 1935.

37 6. Pursuant to Rule 54(d) F.R.C.P., grant plaintiffs such additional relief, including payment of all moneys wrongfully withheld, as this court may deem just, proper, and equitable.

7. Such other and further relief as law and equity may provide.

The Plaintiffs:

By FRANK COCHRAN,
169 Starr Street,
New Haven, Connecticut 06511
203–772–1873.
DOUGLAS M. CROCKETT,
RAYMOND J. KELLY,
746 Main Street,
Post Office Box D,
Willimantic, Connecticut 06226
203–423–8425
ROBERT BECKMAN,
342 Atlantic Street,
Stamford, Connecticut 06901
Their Attorneys.

38 In the United States District Court for the District of Connecticut

Civil Action No. 15,579

DOE, ET AL., PLAINTIFFS

v.

NORTON, DEFENDANT

Civil Action No. 15,589

ROE, ET AL., PLAINTIFFS

v.

NORTON, DEFENDANT

Incorporation of Exhibits—Filed Mar. 9, 1973

1. Exhibit A to this Substitute Complaint consists of the materials Exhibits A and B to the Complaint in *Roe* v. *Norton*, which are hereby incorporated by reference the same as though attached hereto.

2. Exhibits B, C, D, and E to this Substitute Complaint consists of the materials with those designations to the complaint

in *Doe* v. *Norton*, which are hereby incorporated by reference the same as though attached hereto.

Plaintiffs:
By FRANK COCHRAN,
DOUGLAS CROCKETT,
RAYMOND KELLY,
ROBERT BECKMAN,
Their Attorneys

39 Certification (omitted in printing).

40 UNITED STATES DISTRICT COURT,
DISTRICT OF CONNECTICUT,
CHAMBERS OF JUDGE JON O. NEWMAN,
Hartford, Conn., March 12, 1973.

Re Donna Doe, et al v. Nicholas Norton, etc. Civil No. 15,579.
Sharon Roe, et al v. Nicholas Norton, etc. Civil No. 15,589

DAVID ROSEN, ESQ.
AND EDWARD DOLAN, ESQ.
265 Church Street,
New Haven, Conn.

DEAR SIRS: I understand that you are willing to serve as counsel for the children in the above-captioned three-judge court cases. Enclosed please find copies of the Court's files.

The Court appreciates your willingness to serve as counsel, and this letter is your appointment as such.

Sincerely,

JON O. NEWMAN,
United States District Judge.

41 In the United States District Court for the District of Connecticut

Civil Action No. 15,579; April 10, 1973

DONNA DOE, ET AL, PLAINTIFFS

v.

NICHOLAS NORTON, DEFENDANT

Notice of Filing of Affidavits as Evidence

Pursuant to the agreement reached by counsel for all parties in this action at the pre-trial conference presided over by Judge

7. Such other and further relief as law and equity may provide.

The Plaintiffs:

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Their Attorneys.

38 In the United States District Court for the District of Connecticut

Civil Action No. 15,579

DOE, ET AL., PLAINTIFFS

v.

NORTON, DEFENDANT

Civil Action No. 15,589

ROE, ET AL., PLAINTIFFS

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NORTON, DEFENDANT

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Re Donna Doe, et al v. Nicholas Norton, etc. Civil No. 15,579.
Sharon Roe, et al v. Nicholas Norton, etc. Civil No. 15,589

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The Court appreciates your willingness to serve as counsel, and this letter is your appointment as such.

Sincerely,

JON O. NEWMAN,
United States District Judge.

41 In the United States District Court for the District of Connecticut

Civil Action No. 15,579; April 10, 1973

DONNA DOE, ET AL, PLAINTIFFS

v.

NICHOLAS NORTON, DEFENDANT

Notice of Filing of Affidavits as Evidence

Pursuant to the agreement reached by counsel for all parties in this action at the pre-trial conference presided over by Judge

Blumenfeld on March 12, 1973, plaintiffs are filing as evidence affidavits of plaintiffs and others similarly situated. For convenience, attached to the affidavits is a *Summary* and *Categorization* to relate the lengthy affidavits to the legal issues in this action.

43 In the United States District Court for the District of Connecticut

Civil Action No. 15,579; April 13, 1973

DONNA DOE, ET AL, PLAINTIFFS

v.

NICHOLAS NORTON, DEFENDANT

Summary of Affidavits

I. B:

1. No explanation by Welfare Department of her child's legal paternal rights.
2. No contact with father since mother became pregnant.
3. She feels that any further contact with the father would be detrimental to her child and to her.

II. RENA ROE:

1. No explanation by Welfare Department of her child's legal paternal rights.
2. Father has made verbal threats of physical harm to mother if she divulges his name.
3. No interest was shown in the child by the father who denied paternity.

44 4. Mother has plans for a future marriage and the adoption of the child by her intended husband.

III. LINDA LOE:

1. Her two illegitimate children were born over three years ago.
2. She was divorced more than three years ago.
3. No paternal support or paternal acknowledgement.
4. No explanation by Welfare Department of children's legal paternal rights.

IV. A:

1. One year old illegitimate child.
2. A is now planning to marry putative father and she feels that Section 52–440b legal action could destroy the possibility of marriage.
3. A has written acknowledgement of paternity and is in the process of having the child's name changed to that of the father.
4. No explanation to A by Welfare Department of her child's legal paternal rights.

V. MARY BROWN:

1. No explanation by Welfare Department of her child's legal paternal rights.
2. Planning to marry man who is not the putative father but whom most believe to be the father.

45 4. Written acknowledgement of paternity by putative father.

VI. MILDRED WALTER:

1. Gave name of putative father to Welfare Department.
2. Fears putative father because of prior beatings and physical abuse. The father was arrested and plead guilty to assault against her. Afraid to place her own life and that of the child in danger by signing a paternity petition.
3. She has no objection to Welfare Department initiation of paternity action against putative father.
4. She has received four Welfare Department letters indicating her welfare benefits will be terminated if she does not sign a paternity petition.

VII. M:

1. Six month old illegitimate daughter.
2. M plans to marry the putative father.
3. Fears that paternity action will destroy possibility of marriage.
4. No explanation to M by Welfare Department of her child's paternal benefits.

VIII. DONNA DOE:

1. Seventeen month old illegitimate child and two other legitimate children.

46 2. November, 1972, Doe's application for AFDC was denied for failure to disclose putative father but since

the initiation of this action she has been declared eligible for welfare benefits.

3. No explanation from Welfare Department of her child's paternal legal rights.

4. Stability of family from non-disclosure because:

a. Doe and children are devout members of Seventh Day Adventist Church.

b. Strong emphasis of church on family participation in Sabbath programs and services.

c. Weekly attendance by Doe and family—mutual family happiness and strength.

6. Putative father is Roman Catholic and opposes religious training that his child is now receiving and has expressed his feelings on matter to Doe.

7. Disclosure will jeopardize church membership—one of church's prohibitions is premartial sexual intercourse. Violation is ground for disfellowship. Only a few church elders know real situation—rest of Congregation is ignorant of the facts.

IX. FRANCES FOE:

1. Does not know father but knows that her child is the result of either an incestuous union or one with a mentally unstable individual whose whereabouts are unknown to her.

47 2. No explanation by Welfare Department of her child's legal paternal rights.

X. SALLY SMITH:

1. She has divulged the putative father's name to the Welfare Department.

2. Birth certificate signed by father and child bears his name.

3. Child supported by father and only receives Title XIX *not* AFDC.

4. Welfare Department wants her to sign paternity petition.

XI. DOROTHY POE:

1. Because she is undergoing psychiatric treatment and has a possible heart condition she does not feel it is in her best interest or her child's to expose herself to the additional stress of testifying in court.

2. No explanation by Welfare Department of her child's legal paternal rights.

XII. C:

1. She has told the welfare department that the father is one of three men. She has never refused to divulge those names to the department, but rather offered to submit all three names to the Welfare Department after the birth of her child.

48 2. She has received a citation to appear in Circuit Court and a continuance was obtained until April 28, 1973.

3. The Welfare Department explained the potential social security benefits her child might be able to obtain if paternity was established.

XIII. SHARON ROE:

1. She has received a citation to appear in Circuit Court but the matter is still pending.

2. She refuses to disclose the name of the child's father because of her right to sexual privacy, and the putative father has threatened to leave the state and thus sever the relationship with their daughter if his name is disclosed.

XIV. D:

1. No explanation by the Welfare Department of her child's potential legal paternal rights.

2. D's illegitimate child is over 4 years old.

3. D worked a third shift to enable her to support and care for her child until her failing health prevented her from continuing to work.

4. The three year statute of limitations on paternity actions has passed.

5. D feels disclosure of the father's name would invade her privacy, interfere with her relationship with her daughter, and serve no useful purpose.

49 *XV. KATHERINE LOPES:*

1. Was forced by the welfare department to initiate a paternity action.

2. The paternity trial was a humiliating experience which forced her to publicly disclose details of her private sexual and personal life.

532-950—74——3

50 In the United States District Court
for the
District of Connecticut

Civil Action No. 15,579; April 13, 1973

DONNA DOE, ET AL., PLAINTIFFS
v
NICHOLAS NORTON, DEFENDANT

Affidavit Categorization

I. The illegitimate child will not lose potential monetary rights from the putative father if a paternity action in the mother's name is not initiated.

A. The paternity action statute of limitations has run.

1. III
2. XIV

B. The mother had a written acknowledgment of paternity from father.

1. IV*
2. V*
3. X*

51 C. The mother has divulged or had offered to divulge the putative father's name to the welfare department. The welfare department is able to bring a paternity action in its own name.

1. VI*
2. X*
3. XII

D. The putative father's name is unknown to the mother.

1. IX*
2. XII*

II. The mother has made a decision based on reasonable grounds that divulging the putative father's name to the welfare department or initiating a paternity action in her own name will not be in her child's best interests.

A. Mother fears physical retaliation from the father.

1. II*
2. VI*

*The asterisk denotes the affidavit falls into more than one of categorizations I and II.

B. Future contact with father or public disclosure of status of illegitimacy would be detrimental to both mother and child.

1. I (father has never contacted mother since pregnancy)

52 2. VIII (public knowledge of illegitimacy could cause excommunication)

3. XI (mother's psychiatric and possible heart condition preclude paternity trial)

4. IX* (father a close relative or mentally unstable)

5. XIII (paternity action could destroy father-daughter relationship)

C. The mother intends to marry the father and believes that a paternity action would jeopardize the child's chances and her chances for a warm and permanent relationship with the father.

1. VII
2. IV*

D. The mother intends to marry shortly and her husband would adopt the illegitimate child. A paternity action would jeopardize the chances for this arrangement.

1. V*
2. II*

III. No explanation of child's potential paternal legal rights.

1. I
2. II
3. III
4. IV
5. V

53 6. VII
7. VIII
8. IX
9. XI
10. XIV

IV. Explanation of child's possible potential social security benefits.

1. XII

Plaintiffs,

By DOUGLAS M. CROCKETT,
Their Attorney.

See footnote p. 34.

54 I

AFFIDAVIT

WILLIMANTIC, *March 12, 1973.*

STATE OF CONNECTICUT,
County of Windham, ss:

B and her child reside in West Willington: Connecticut, and are currently receiving AFDC benefits from the Connecticut State Welfare Department. B received a letter dated December 7, 1972, from an attorney retained by the Welfare Department which stated that legal action would be instituted against her if she failed to disclose the naine of her child's father.

No welfare department representative, employee, or attorney has ever explained to B that her child could obtain benefits from her putative father if paternity was established other than her social worker who informed B seventeen months ago that she would be entitled to receive support payments for her child. However, the *Doe* v. *Norton* Ruling on Application for a Preliminary Injunction which outlined support and other potential benefits was explained to her in detail.

B has a verbal acknowledgement of paternity by her child's putative father. In light of this verbal acknowledgement of paternity, B feels it is in her child's best interest not to name the father and initiate a paternity action at this time.
55 She has had no contact with her child's putative father since she became pregnant and feels that any future contact would be severely detrimental to both herself and her child.

The individual referred to as B has personally appeared before me, this day March 12, 1973, and under oath, has sworn to the accuracy of the above statement.

DOUGLAS M. CROCKETT,
Commissioner of Superior Court.

56 II

AFFIDAVIT

WILLIMANTIC, *March 12, 1973.*

STATE OF CONNECTICUT,
County of Windham, ss:

RENA ROE and her illegitimate child reside in Willimantic, Connecticut, and are currently receiving AFDC benefits from the Connecticut Welfare Department. On December 7, 1972, RENA ROE received a letter from an attorney retained by the welfare department which stated that § 52-4406 legal action would commence if she failed to disclose the name of her child's father.

No welfare department representative, employee, or attorney has ever explained to RENA ROE that her child could obtain benefits from his putative father if paternity was established. However, the *Doe* v. *Norton* Ruling on Application for a Preliminary Injunction which outlined these potential benefits was explained to her in detail.

RENA ROE feels it is in her child's best interest that she and her child do not have any further contact with the father. The father has threatened RENA ROE with physical harm if she divulges his name. He has never shown any interest in his child and has consistently denied fathering the child. The
57 chances for financial recovery from the father are minimal since he works irregularly.

RENA ROE hopes to marry at some time in the future and she hopes her husband would adopt the child. She feels it is in her child's best interest to minimize any contact with the child's father. The father's character is such that he would be a detrimental influence on his child and on the mother/child relationship.

The individual referred to as RENA ROE has personally appeared before me and, under oath, has sworn to the accuracy of the above statement.

By DOUGLAS M. CROCKETT.

58 III

AFFIDAVIT

STAMFORD, *March 12, 1973.*

STATE OF CONNECTICUT,
County of Fairfield, ss:

LINDA LOE, a plaintiff in this action whose real name and identity are known to me, appeared before me and swore to the truth of the following statements:

1. That she and her two children reside in Stamford, Connecticut, and are currently receiving AFDC benefits from the Connecticut Welfare Department.

2. That her children were born more than three years ago, and are not the children of her former spouse from whom she was divorced more than three years ago.

3. That there has been no paternal support, or acknowledgement of paternity of her children.

4. That there has been no institution of any action to establish the paternity of her children.

5. That on December 4, 1972, an attorney retained by the Connecticut Welfare Department sent her a letter stating that he would commence legal action if she failed to disclose the name of the father of her children.

6. That no representative, employee or attorney of the Connecticut Welfare Department has ever explained to her what benefits her children could obtain if their paternity were established, but that her counsel has fully explained to her
59 such benefits as outlined in the *Doe* v. *Norton* Ruling on Application for Preliminary Injunction.

7. That after full consideration of the possible potential benefits to her children, the reasons she had previously chosen not to disclose the name of the father of her children, and the fact that actions may no longer be commenced to establish the paternity of her children because they are over three years of age, she believes it is in the best interests of her children that she not disclose the name of the father of her children at this time.

ROBERT C. BECKMAN,
Commissioner of the Superior Court.

60 IV

AFFIDAVIT

WILLIMANTIC, *March 12, 1973.*

STATE OF CONNECTICUT,
County of Windham, ss:

A and her one year old illegitimate child reside with A's mother in Willimantic, Connecticut, and are currently receiving AFDC benefits from the Connecticut Welfare Department. On November 17, 1972, she received a letter from an attorney retained by the Welfare Department that Section 52–440b legal action would commence if she failed to disclose the name of her child's father.

A and the child's father are planning to marry. She is afraid that if she discloses his name, subsequent legal action could jeopardize their relationship and the possibility of marriage.

A has obtained a written acknowledgement of paternity from the father and is in the process of obtaining an application to have her child's last name changed to the father's last name.

No welfare department official has ever explained to A that her child could obtain benefits from his putative father if paternity was established. However, the *Doe* v. *Norton* Ruling on Application for a Preliminary Injunction which outlined
61 these potential benefits was explained to her in detail.

In light of her possible marriage and the possible change of her child's last name, and the written acknowledgement of paternity, she feels that it is not in her child's best interest to name the father to the Welfare Department.

The individual referred to as A has personally appeared before me, and, under oath, has sworn to the accuracy of the above statment.

DOUGLAS M. CROCKETT,
Commissioner of Superior Court.

62 V

AFFIDAVIT

WILLIMANTIC, *March 12, 1973.*

STATE OF CONNECTICUT,
County of Windham, ss:

MARY BROWN and her child reside in Willimantic, Connecticut, and are currently receiving AFDC benefits from the Connecticut Welfare Department. On February 9, 1973, MARY BROWN received a letter from an attorney retained by the welfare department which stated that legal action would commence if she failed to disclose the name of her child's father.

MARY BROWN is planning to marry a man who is not the father of her illegitimate child. Most people believe that this man is in fact the father of the child. MARY BROWN believes that after the marriage her husband will adopt the child.

No welfare department representative, employee, or attorney has ever explained to MARY BROWN that her child could obtain benefits from his putative if paternity was established. However, the *Doe* v. *Norton* Ruling on Application for a Preliminary Injunction which outlined these potential benefits was explained to her in detail.

MARY BROWN has an acknowledgement of paternity in writing by her child's putative father.

63 In light of her possible marriage and her child's possible adoption and the written acknowledgement of paternity, MARY BROWN feels it is in her child's best interest not to name the father and initiate a paternity action at this time.

The individual referred to as MARY BROWN has personally appeared before me and, under oath, has sworn to the accuracy of the above statement.

DOUGLAS M. CROCKETT,
Commissioner of Superior Court.

64 VI

AFFIDAVIT

FEBRUARY 23, 1973.

STATE OF CONNECTICUT,
County of Tolland, Rockville, ss:

I, Mildred Walter being first duly sworn according to law, hereby depose, swear and say:

1. That I live at 66 Union Street in Rockville and receive welfare assistance under the AFDC program for myself and my minor daughter Tammy Jean Walter.

2. That I have given the name of the father of my child to the Welfare Department, so they can institute paternity and support proceedings against him.

3. That due to the violent nature of Tammy's father, I have refused to start paternity proceedings against him but have supplied the Welfare Department with all the information about this man.

4. That during the months of January and February 1973, I have received four letters from the Manchester office of the State Welfare Department informing me that unless I agreed to sign paternity papers and testify in court proceedings brought against the father of Tammy, they would cut off my welfare checks immediately.

5. I have tried to cooperate in any way possible with the Welfare Department concerning this matter, but I can-

65 not testify or sign papers that may place my life and that of my child in danger.

6. My fear of this man is due to the beatings and physical abuse he inflicted on me when he was in Rockville.

7. On one occasion, in January 1972, the father of Tammy, dragged me by the hair and kicked me down Union Street in Rockville when I was 9 months pregnant.

8. He was arrested by the Rockville police charged with assault, plead guilty and placed on two years probation for those acts against me.

9. Because of incidents like this which also occurred on other occasions in 1972, I am deathly afraid of this man and do not wish to be involved in any situation with him because of his explosive temper.

10. I do not feel the Welfare Department should place these unreasonable and distressing demands upon me where they have the father's name and address in their files.

MILDRED WALTER.

Subscribed to and sworn before me this 23rd day of February 1973.

RAYMOND J. KELLY,
Commissioner of Superior Court.

66 VII

AFFIDAVIT

ROCKVILLE, *March 20, 1973.*

STATE OF CONNECTICUT,
County of Tolland:

M and her six month old daughter reside in Manchester, Connecticut and are currently receiving AFDC benefits from the Connecticut Welfare Department. On February 1st, 1973, she received a letter from an attorney retained by the Welfare Department that told her she would be cited into Circuit Court to name the putative father of her child if she failed to disclose his name.

The father of the child recently served seven months of a years sentence in Seyms Street jail for criminal non support. He has served time in jail for non support on two other occasions. Since his release from jail the father of the child has contacted an attorney to begin divorce proceedings against his present wife.

M and the putative father plan to marry as soon as he is divorced from his present wife. M is afraid that if she discloses his name, subsequent legal action could jeopardize their relationship and the possibility of marriage. If the putative father's present wife learns of this paternity action, she will attempt to frustrate any divorce action started by the putative father. M has an oral acknowledgment of paternity from the father.

Although M has been contacted by welfare workers to name the putative father of her child, no welfare department
67 official, or employee has ever explained to M that her child could obtain benefits from her putative father if paternity was established. However the *Doe* v. *Norton* ruling on Application for a Preliminary Injuction which outlined these potential benefits, were explained to her in detail.

In light of her possible marriage, and the pending divorce action of the putative father M feels it is in her childs best interest not to name the father and initiate a paternity action at this time.

The individual referred to as M has personally appeared before me and under oath, has sworn to the accuracy of the above statement.

RAYMOND J. KELLY,
Commissioner of the Superior Court.

68 VIII

AFFIDAVIT

ROCKVILLE, *March 19, 1973.*

STATE OF CONNECTICUT,
County of Tolland, ss:

Donna Doe and her 17 month old illegitimate child reside in Manchester with her two other children by a previous marriage. She is currently receiving AFDC benefits from the Connecticut Welfare Department for her entire family. On November 3, 1972 Donna Doe's application for welfare benefits was denied for failure to name the youngest child's putative father pursuant to Section 52–440b of the Connecticut General Statutes. Since that time the State Welfare Department has acknowledged its error in refusing Donna Doe benefits (see Defendant's affidavit of Nicholas Norton Welfare Commissioner February 5th 1973) and has placed her entire family on assistance. Since being placed on AFDC, plaintiff Donna Doe has been contacted by her caseworker to name the father of her youngest son, or she will be compelled to name the father in Court pursuant to 52–440b Connecticut General Statutes.

No welfare department representative, employee or attorney has ever explained to her that her child could obtain benefits from his putative father if paternity was established. However the *Doe* v. *Norton* Ruling on Application for a Preliminary Injunction which outlined support and other potential benefits was explained to her in detail.

69 Donna Doe has a verbal acknowledgement by her youngest child's putative father. Despite this verbal acknowledgement she feels her child's best interest and the stability of her family would be best served by non-disclosure for the following reasons:

Donna Doe and her children are practising members of the Seventh Day Adventist Church. She and her family attend religious exercises, community discussion groups, recreation and games for the children of Church members. Strong emphasis is placed by the Church on family participation in Sabbath programs and services. Weekly attendance by Plaintiff Doe and her three children at these services has provided an atmosphere of mutual family happiness and strength for them. Donna Doe feels the religious experience and emphasis on family participation that the Adventist Church encourages has been a strengthening factor in her relationship with her children. Her two older boys presently attend an Adventist school.

The putative father of Donna Doe's youngest child is a Roman Catholic. He is very opposed to the religious training that is being provided to the youngest Doe boy. He would rather the child be raised a Roman Catholic. He has made his feelings on this matter of religious up bringing made very clear to Donna Doe.

It is because of the putative father's opposition to the religious training being given the youngest Doe child that Donna Doe does not wish to identify him.

70 Donna Doe is also concerned that the public disclosure of the illegitimacy of her youngest child will jeopardize their church membership. It has been explained to her by her Pastor that an illegitimate child reflects poorly on the moral character of the mother in the eyes of the Church. The Seventh Day Adventist Church does not permit premarital sex, smoking or drinking. Violation of these rules are grounds for "disfellowship" i.e. excommunication or expulsion from Church membership and services. Donna Doe fears that being compelled to name the putative father will result in possible "disfellowship" from her Church, or at the very least injure her standing and reputation within the Church community. At the present time only a few Church elders know of her situation. All other Church members assume her three children are issue of her previous marriage.

In view of the difficulties that naming the putative father would present to continued Church membership for Donna Doe and her family she feels it is in their best interest not to name the father of her youngest child. Disclosure of his identity could only lead to disruption of the family and Church life that have provided such strength and stability to them. The putative father's expressed desire to raise the youngest child in another religion presents a source of disruption and anxiety to the entire family. It is Donna Doe's firm belief that compliance with 52–440b will produce more harm than good to her youngest boy and the rest of her children.

71 The individual referred to as Donna Doe has personally appeared before me and under oath, has sworn to the accuracy of the above statement.

By RAYMOND J. KELLY.

72 IX

AFFIDAVIT

MARCH 22, 1973.

STATE OF CONNECTICUT,
County of New London, ss, Norwich, Ct.

FRANCES FOE, whose real name and identity are known to me appeared before me and swore to the truth of the following statements:

1. That she and her minor child reside in Norwich, Connecticut and are recipients of Aid to Families with Dependent Children Program of the Welfare Department of the State of Connecticut.

2. That she was advised by her caseworker that she had to name the father of her child in order to receive welfare benefits.

3. That she has chosen not to give information regarding the paternity of the child because:

(a) she is uncertain as to who the true father of the child is.

(b) that the child was conceived either under incestuous conditions or by a person who is emotionally unstable and whose whereabouts are unknown to her.

(c) that neither of the persons involved are aware that conceivement took place as she left the area unaware that she had become pregnant.

(d) that she chooses not to make the existence of her child known to either party and desires to complete her high school education and assume full financial responsibility of her child through gainful employment.

73 4. That her caseworker did not explain the benefits the child may some day be eligible for under the Social Security Act if paternity was established.

5. That I explained said rights of the child to said recipient and she continued to choose not to name the father of the child for reasons set forth in paragraph three section (d) on page one of this affidavit.

PATRICIA PAQUETTE,
Notary Public.

74 X

AFFIDAVIT

I, SALLY SMITH, being duly sworn depose and say:

1. On or about December 8, 1972 I received a letter from Attorney Francis Foley, III of 22 Shetucket Street, Norwich, Connecticut advising me to make an appointment with his office for the purpose of ascertaining the name of the father of my child.

2. On December 19, 1972 I appeared in Mr. Foley's office to be advised of my legal rights in that regard as per the implication of his letter to me dated December 7, 1972.

3. On December 19, 1972 Mr. Foley advised me that if I did not sign "Acknowledgement of Paternity" papers which were available in his office that I would be brought to Court and made to sign the papers in the Court and answer under oath as to the name of the father of my child.

4. I indicated to Mr. Foley that I had previously named the father of my child in question to the State Welfare Department and that the father signed the birth certificate at the hospial.

5. Mr. Foley then checked his file and confirmed that the child carried its father's legal name in the records made available to him by the Department of Welfare.

6. I further advised Mr. Foley that the child in mention is not a recipient of Welfare under my AFDC Budget as the putative father is supporting the child, and that the only benefits I am seeking for the child are Title XIX, medical and dental benefits.

7. I feel this action by the State of Connecticut is an invasion of my privacy and in violation of equal protection under the civil rights laws.

SALLY SMITH,
Pseudonym.

JANUARY 24, 1973.

75 STATE OF CONNECTICUT,
County of New London, ss, Norwich:

Personally appeared, SALLY SMITH, signer in the foregoing instrument, personally known to me and referred to in the foregoing affidavit as SALLY SMITH. Subscribed and sworn to before me this 24th day of January, 1973.

PATRICIA PAQUETTE,
Notary Public.

XI

AFFIDAVIT

76 STATE OF CONNECTICUT,
County of New Haven, ss, New Haven:

I, DOROTHY POE (a pseudonym I have chosen in order to protect my privacy), being first duly sworn, depose and say:

1. I am a plaintiff in the case of *Roe et al* v. *Norton*, Civil Action No. 15,589 (United States District Court, District of Connecticut).

2. My children and I are recipients of assistance from the Connecticut State Welfare Department under the Aid to Families With Dependent Children Program (AFDC), a resident of New Haven, Connecticut, and a citizen of the United States and the State of Connecticut.

3. On January 24, 1971, my daughter was born. She is not issue of any valid marriage. On several occasions since her birth, various workers at State Welfare have asked me whether I wanted to name the baby's father. I have declined to do so, and until December, 1972 I was never pressed further.

4. On December 19, 1972, I was served with a petition and subpoena requiring me, under authority of Connecticut General Statutes § 52-440b to appear in the Sixth Circuit Court and

disclose under oath the name of my daughter's father. As of this date said petition remains pending in that court.

77 5. I have been informed by my attorney that the possible penalties for refusing to so testify are a $200. fine and/or one year in jail.

6. My attorney has also informed me that there are possible advantages for my daughter and myself if I tell Welfare her father's name, including possible financial support if I go off Welfare and benefits under Social Security and other government programs. Nobody at the Welfare Department had ever informed me of that.

7. After my first child was born, I gave the Welfare Department her father's name. They have never taken any action to get him to pay support. I later realized that he would make a lot of trouble, had other dependents and had little money anyway. For those reasons I didn't want to pursue him for support. The Welfare Department never took any action against him after I gave them his name.

8. The main reason I don't want to give the Welfare Department my younger daughter's name is that I am very nervous. I go to a psychiatric clinic where I have been advised not to work because of my condition. I may also have a heart condition; the Doctor's aren't sure yet. For both psychiatric and medical reasons I do not want to be put in a position of great pressure such as testifying in court.

78 9. In addition I feel that whether to pursue support from my child's father is something I should be able to decide according to whether I think he will pay, whether he will make trouble for me, how likely we are to receive other benefits, and how much strain I would have to go through to do it.

10. I have been advised by the psychiatric clinic I attend, that it is generally good for children to know who their father is. For reasons of my own I accept this advice in one case and reject it in the other.

DOROTHY POE,
A pseudonym.

Sworn to and subscribed before me this 26th day of March, 1973.

_____,
Commissioner of the Superior Court.

79 XII

AFFIDAVIT

WILLIMANTIC, *March 27, 1973.*

STATE OF CONNECTICUT,
County of Windham, ss:

C and her two month old child reside in Willimantic, Connecticut, and are currently receiving AFDC benefits from the Connecticut Welfare Department.

On or about December 29, 1972, C was informed by an employee of the Connecticut State Welfare Department at the time she was applying for AFDC benefits that if paternity were established, her child would be entitled to Social Security benefits from the putative father. However, the *Doe* v. *Norton* Ruling on Plaintiffs' Application for a Preliminary Injunction which outlined other potential benefits was explained to her in detail by a law clerk from this office. C told this employee that there were three possible fathers of her child and that immediately after the birth of the child she would disclose all three names to the Welfare Department. She was informed by the Welfare employee that paternity could not be established through blood tests and without direct knowledge or a written acknowledgement of paternity, disclosure would be meaningless.

On or about February 27, 1973, C received a letter from Raymond J. Chabot, Esquire, a private attorney retained

81 by the Connecticut State Welfare Department, requesting C to call his office. C telephoned Mr. Chabot who requested her to disclose to him the name of her child's putative father. At that time C told Mr. Chabot that she did not know the identity of her child's putative father and upon his request sent him a letter stating that fact.

Subsequently C was served with a petition compelling her appearance before the Connecticut Circuit Court for the Eleventh Circuit and disclose the name of the child's putative father and to institute an action to establish the paternity of said child pursuant to Section 52-440b of the Connecticut General Statutes.

The Circuit Court for the Eleventh Circuit has granted C's motion for a continuance of the Court's order to appear based

552-950—74——4

upon the pendency of *Doe, et al* v. *Norton,* Civ. No. 15, 579 (D. Conn.) until April 27, 1973.

The individual referred to as C above has personally appeared before me this 28th day of March, 1973, and, under oath, has sworn to the accuracy of the above statement.

DOUGLAS M. CROCKETT,
Commissioner of Superior Court.

81 XIII

AFFIDAVIT

STATE OF CONNECTICUT,
County of New Haven, ss, New Haven:

I, SHARON ROE, (a pseudonym I have chosen to protect my privacy), being first duly sworn, depose and say:

1. I am a plaintiff in the case of *Roe et al* v. *Norton,* Civil Action No. 15,589 (United States District Court, District of Connecticut).

2. My children and I are recipients of assistance from the Connecticut State Welfare Department under the Aid to Families with Dependent Children Program (AFDC), a resident of New Haven, Connecticut and a citizen of the United States and the State of Connecticut.

3. On October 27, 1972, my daughter was born. She is not issue of any valid marriage.

4. Shortly after my daughter's birth, I applied for assistance under the AFDC Program. At that time, I was referred to the Family Relations office of the Sixth Circuit Court in New Haven. There I was asked to name my daughter's father and declined to do so.

5. On December 20, 1972, I was served with a petition and a subpoena requiring me, under authority of Connecticut General Statutes § 52-440b to appear in the Sixth Circuit Court and disclose under oath the name and whereabouts of my
82 daughter's father. As of this date said petition remains pending in that court.

6. I have been informed by my attorney, that the possible penalties for refusing to so testify are a $200. fine and/or one year in jail.

7. My attorney has also informed me that there are possible advantages for my daughter and myself if I give her father's name, including possible financial support when I go off Welfare and benefits under Social Security and other government programs.

8. I do know and could probably prove who my daughter's father is. When she is older I plan to let her know as well, whether or not she is receiving financial support from him.

9. I have several reasons for refusing to give the name to the Welfare Department.

First, the question of with whom I have had sexual intercourse is private; I don't feel I should be forced to tell any government agency that,

Second, my daughter's father has no fixed address. My attorney has informed me that if I so testify, I will be subject to unfriendly cross-examination and embarrassment in open court.

Third, I have seen him since her birth and he has started to develop a good relationship with her; he plays with her. If I were to give his name he would leave the state and break off the relationship.

83 Fourth, the only reason I have been given that the Welfare Department wants to know his name is to try to get support money from him. He has irregular earnings at best and has said that he would leave the state if I push him. Furthermore, while I am on the State, I would receive the same amount of money for her total support whether or not he is contributing to it.

Finally, I think I have, and my attorney has advised me that he thinks I have a constitutional right to decide whether it is worth while to seek financial support from my daughter's father.

SHARON ROE,
Pseudonym.

Personally appeared the person known in these proceedings as Sharon Roe who is personally known to me, and subscribed and sworn to this affidavit before me this 31st day of March, 1973.

———— ————,
Commissioner of the Superior Court.

84 XIV

AFFIDAVIT

APRIL 2, 1973.

STATE OF CONNECTICUT,
County of Windham, ss, Killingly:

D and her child reside in the Borrough of Danielson, Connecticut, and are currently receiving A.F.D.C. benefits from the Connecticut State Welfare Department. D received a letter dated February 26, 1973 from an attorney retained by the Welfare Department which stated that legal action would be instituted against her if she failed to disclose the name of her child's father.

No Welfare Department representative, employee, or attorney has ever explained to D that her child could obtain benefits from her putative father if paternity was established. However, the *Doe* v. *Norton* Ruling on Application for a Preliminary Injunction which outlined support and other potential benefits was explained to her in detail.

D has worked the third shift (12:00 a.m. to 8:00 a.m.) for three years to support herself and her child. D is no longer physically able to work the third shift and provide proper care for her child.

D's child is four years old and the statute of limitations regarding paternity has elapsed.

85 D has a verbal acknowledgment of paternity by her child's putative father. To the best of her knowledge, the putative father no longer resides in the State of Connecticut.

In light of the fact that D has supported her child for three years without the assistance of anyone, and in view of the facts that the putative father is most likely out of state and the statute of limitations has lapsed, D feels that instituting a paternity action would serve no useful purpose except that of invading her privacy and adversely affecting the family relationship which she has fought so long to protect.

The individual referred to as D has personally appeared before me, the day of April 2, 1973, and under oath, has sworn to the accuracy of the above statement.

RAYMOND RICHARD NORKO,
Commissioner of Superior Court.

86 XV

AFFIDAVIT

STATE OF CONNECTICUT,
County of New Haven, ss:

I, KATHERINE LOPES, being first duly sworn, depose and say:

1. I am the mother of two children who were born out of wedlock. The same man fathered both children.

2. Their father acknowledged paternity of the older child, and the acknowledgement was filed with the Connecticut Circuit Court for the Sixth Circuit. Enforcement of its support provisions is supposed to be handled by the Family Relations office of that court.

3. I have at different times since the birth of my last child applied for and received benefits from the Connecticut State Welfare Department under the Aid to Families with Dependent Children (AFDC) program. When my youngest child was born, five years ago, the Welfare Department made me reveal his father's name in order to receive welfare benefits.

4. On at least two occasions, the Welfare Department has made me go to Family Relations to sign affidavits for non-support warrants. Although I have done so, to the best of my knowledge Family Relations has never had him arrested. I have not received any support money from him during the time I have not been receiving AFDC.

5. I was told that I must bring a paternity action, and given a list of three (3) local attorneys to choose from to represent me, which I did later, my son and I were ordered to go

87 to Yale-New Haven Hospital for a blood test. Although the people at the hospital were very pleasant, they knew we were there because of the paternity action, and said so in front of my son, who was then about two (2) years old. This made me feel uncomfortable.

6. My son's father denied paternity and there was therefore a trial before the Sixth Circuit Court (New Haven). The trial was held in the regular civil courtroom with several people present who had nothing to do with the case.

7. When I testified, there was a long cross-examination by Edward Dolan, the father's lawyer. I don't remember now exactly what he asked; I seem to have blocked it from my memory. It must have been about my sexual relationship with my son's father and whether I had had other sexual relations during that time.

8. I remember that the judge who was hearing the case looked bored most of the time. I felt embarrassed and uncomfortable; for that reason I would drop my voice. But every time I did that the judge would tell me to keep my voice up so that everyone could hear.

9. My son's father also testified, denying that he was the father. I felt both angry at him for lying and very humiliated.

10. A year later the judge ruled against me, so that we have received no support or other benefits as a result of that proceeding.

11. The whole experience left me feeling dirty, as though I were a bad person for having had my son. At the time, I was worried about that feeling would make me feel and act toward him. Now, although I still feel embarrassed and humiliated whenever I think about it, I don't think it has made me love him any less.

88 12. I don't think I would be willing to go through that kind of experience again.

KATHERINE LOPES.

Sworn to and subscribed before me this 31st day of March, 1973.

———— ————,
Commissioner of the Superior Court.

89 In the United States District Court for the District of Connecticut

Civil No. 15589

SHARON ROE AND DOROTHY POE, INDIVIDUALLY AND ON BEHALF OF OTHERS SIMILARLY SITUATED

v.

NICHOLAS NORTON, INDIVIDUALLY AND AS COMMISSIONER OF WELFARE OF THE STATE OF CONNECTICUT, AND ON BEHALF OF OTHERS SIMILARLY SITUATED

Answer of the Defendant

COUNT I

1. Paragraphs 5, 6, 7 and 8 are admitted.
2. As to paragraphs 1, 2, 4, and 9, the defendant has insufficient knowledge or information to form a belief, and leaves the plaintiffs to their proof.
3. So much of paragraph 3 as alleges that this is a proper case for a three-judge court is admitted, but the remaining allegation is denied i.e. ". . . on the grounds that said statute violated . . . equal protection of the laws."

COUNT II

4. Paragraph 11 is admitted.
5. Paragraphs 12 and 13 are denied.

90 COUNT III

6. Paragraphs 14 and 15 are denied.
7. The Answers to paragraphs apply as they are incorporated in all counts.

Defendant:

By (s) JAMES M. HIGGINS,
Assistant Attorney General,
75 Meadow Street,
East Hartford, Connecticut 06108,
Tel. (203) 289-9521.

Copies hereof provided to counsel of record on April 30, 1973.

(s) JAMES M. HIGGINS,
Assistant Attorney General.

91 Civil No. 15,589

DONNA DOE, LINDA LOE, RENA ROE, SALLY SMITH, AND ALL OTHERS SIMILARLY SUITED

v.

NICHOLAS NORTON, INDIVIDUALLY AND AS COMMISSIONER OF WELFARE OF THE STATE OF CONNECTICUT

Civil No. 15,589

SHARON ROE AND DOROTHY POE, INDIVIDUALLY AND ON BEHALF OF OTHERS SIMILARLY SITUATED

v.

NICHOLAS NORTON, INDIVIDUALLY AND AS COMMISSIONER OF WELFARE OF THE STATE OF CONNECTICUT, AND ON BEHALF OF OTHERS SIMILARLY SITUATED

Stipulations

It is hereby stipulated by and between the parties as follows:

1. It is the intent of § 52–440 b and the practice of the Connecticut State Welfare Department in each and every case in which the mother of an illegitimate child fails or refuses to name the putative father of the child to retain an attorney for the purpose of citing the mother court if she persists in refusing to name the probative father.

2. § 52–440 b in the opinion of counsel for all the parties is a civil statute. A contempt committed under this section can be purged at any time by naming the putative father, i.e. putative father, in the opinion of counsel of record herein.

92 DEFENDANT'S EXHIBIT A

STATE DEPARTMENT OF HEALTH,
Hartford, Conn., March 15, 1973.

Mr. JAMES HIGGINS,
Office of Finance and Control,
76 Meadow Street,
East Hartford, Conn.

DEAR MR. HIGGINS: I enclose tables of resident live births in Connecticut by legitimacy. Table IV is a continuation of the time interval to the latest year available (1971). The percentage of illegitimate births are broken first by age of mother and by race.

Very truly yours,

EDWARD C. AUBIN,
Research Analyst, Public Health Statistics Section.

Enclosure.

CONNECTICUT BIRTHS BY RACE AND LEGITIMACY, 1960–65

MOTHERS OF ALL AGES

Year	All races				White births				Nonwhite births			
	Total births	Legitimate	Illegitimate	Percent illegitimate	Total births	Legitimate	Illegitimate	Percent illegitimate	Total births	Legitimate	Illegitimate	Percent illegitimate
1960	40,465	39,812	673	1.7	38,960	38,366	494	1.3	1,625	1,448	177	11.0
1961	43,906	43,734	732	1.8	41,695	41,138	557	1.3	1,811	1,586	225	12.4
1962	46,597	45,702	895	1.8	44,516	43,924	592	1.3	2,021	1,778	243	12.0
1963	47,196	47,109	867	1.8	45,770	45,214	556	1.3	2,197	1,895	302	13.7
1964	50,428	49,470	958	1.9	47,902	47,264	618	1.3	2,526	2,186	340	13.5
1965	52,220	51,279	1,061	2.0	49,504	48,908	596	1.3	2,775	2,372	403	14.5
1966	52,584	52,495	1,089	2.0	50,358	49,921	637	1.3	3,026	2,574	452	14.9
1967	56,900	55,671	1,228	2.2	53,456	52,741	715	1.3	3,453	2,930	523	15.1
1968	56,344	54,799	1,445	2.6	52,645	51,801	844	1.6	3,599	2,998	601	16.7
1969	56,422	54,827	1,595	2.8	52,472	51,653	819	1.6	3,951	3,174	777	19.7
1970	56,669	54,871	1,798	3.2	52,642	51,687	955	1.8	4,027	3,194	833	20.7
1971	57,046	55,041	2,005	3.5	52,716	51,608	1,108	2.1	4,330	3,433	897	20.7
1972	55,480	53,176	2,304	4.2	50,978	49,792	1,186	2.3	4,502	3,384	1,118	24.8
1973	56,476	53,959	2,517	4.5	51,518	50,189	1,324	2.6	4,958	3,770	1,188	24.0
1964	56,611	53,771	2,840	5.0	51,662	50,002	1,660	2.9	4,949	3,678	1,251	25.8
1965	54,208	51,067	3,141	5.8	49,634	47,873	1,661	3.4	4,574	3,604	1,460	28.6
1960–65, total	940,581	915,772	25,159	3.0	795,982	771,690	14,242	1.8	54,990	44,062	10,917	19.6
1966	58,131	54,710	3,422	6.6	47,080	45,296	1,783	3.8	5,002	3,453	1,619	32.0

MOTHERS 20 YEARS OF AGE AND OVER, 1950-65

Year	All races				White births				Nonwhite births			
	Total births	Legitimate	Illegitimate	Percent illegitimate	Total births	Legitimate	Illegitimate	Percent illegitimate	Total births	Legitimate	Illegitimate	Percent illegitimate
1950	38,596	38,139	457	1.2	37,214	36,874	340	0.9	1,382	1,265	117	8.5
1951	41,385	40,818	567	1.4	39,858	39,432	425	1.1	1,527	1,386	141	9.2
1952	44,316	43,732	584	1.3	42,578	42,157	421	1.0	1,738	1,575	163	9.4
1953	45,567	44,935	632	1.4	43,681	43,253	428	1.0	1,886	1,682	204	10.8
1954	47,694	47,031	663	1.4	45,568	45,120	448	1.0	2,126	1,911	215	10.1
1955	47,406	46,664	742	1.5	47,050	46,606	453	1.0	2,347	2,058	289	12.3
1956	50,338	49,574	764	1.5	47,786	47,336	450	.9	2,552	2,238	314	12.3
1957	52,941	52,080	861	1.6	50,039	49,541	498	1.0	2,902	2,539	363	12.5
1958	52,177	51,317	960	1.8	49,144	48,588	556	1.1	3,033	2,629	404	13.3
1959	52,292	51,210	1,082	2.1	48,952	48,412	540	1.1	3,340	2,798	542	16.2
1960	52,113	50,909	1,204	2.3	48,709	48,106	603	1.2	3,404	2,803	601	17.7
1961	52,226	50,954	1,272	2.6	48,624	47,904	720	1.5	3,702	3,050	652	17.6
1962	50,405	48,858	1,547	3.1	46,625	45,869	756	1.6	3,780	2,989	791	20.9
1963	51,478	49,749	1,729	3.4	47,290	46,421	869	1.8	4,188	3,328	860	20.5
1964	51,534	49,611	1,923	3.7	47,348	46,388	960	2.0	4,186	3,223	963	23.0
1965	48,961	46,860	2,101	4.3	44,755	43,658	1,097	2.5	4,206	3,202	1,004	23.9
1950-65	481,329	764,341	17,188	2.2	735,230	725,665	9,565	1.3	46,209	38,676	7,623	16.5
1966	46,428	44,283	2,145	4.6	42,454	41,336	1,118	2.6	3,974	2,947	1,027	25.8

MOTHERS UNDER 20 YEARS OF AGE, 1950-65

Year	All races				White births				Nonwhite births			
	Total births	Legitimate	Illegitimate	Percent illegitimate	Total births	Legitimate	Illegitimate	Percent illegitimate	Total births	Legitimate	Illegitimate	Percent illegitimate
1950	1,889	1,673	216	11.4	1,646	1,492	154	9.4	243	181	62	25.5
1951	2,121	1,906	215	10.1	1,837	1,706	131	7.1	284	200	84	24.6
1952	2,221	1,970	251	11.3	1,958	1,787	171	8.8	263	208	60	26.3
1953	2,429	2,174	255	10.5	2,118	1,961	157	7.4	311	213	98	31.5
1954	2,784	2,480	305	10.8	2,334	2,164	170	7.3	450	275	125	31.3
1955	2,733	2,614	319	10.9	2,505	2,300	205	8.2	428	314	114	26.6
1956	3,248	2,921	325	10.0	2,772	2,585	187	6.7	474	336	138	29.1
1957	3,908	3,591	377	9.5	3,417	3,200	217	6.4	551	391	160	29.0
1958	4,067	3,582	485	11.9	3,501	3,212	288	8.2	566	369	197	34.8
1959	4,131	3,617	514	12.4	3,530	3,241	279	7.9	611	376	235	38.5
1960	4,546	3,962	584	12.8	3,938	3,581	352	8.9	613	381	232	37.8
1961	4,739	4,087	653	13.4	4,092	3,704	388	9.5	628	383	245	39.0
1962	5,075	4,318	757	14.9	4,353	3,923	430	9.9	722	395	327	45.3
1963	4,908	4,210	788	15.8	4,223	3,768	455	10.8	775	442	333	42.9
1964	5,077	4,160	917	18.1	4,234	3,705	529	12.5	843	455	388	46.0
1965	5,247	4,207	1,040	19.8	4,279	3,715	564	13.2	968	492	476	49.2
1950-65	59,402	51,431	7,971	13.4	50,702	46,025	4,677	9.2	8,700	5,406	3,294	37.9
1966	5,703	4,426	1,277	20.4	4,585	3,930	665	14.5	1,118	506	612	——

96 ALL AGES

Year	All races				White births				Nonwhite births			
	Total births	Legitimate	Illegitimate	Percent illegitimate	Total births	Legitimate	Illegitimate	Percent illegitima.	Total births	Legitimate	Illegitimate	Percent illegitimate
1967	49,840	46,141	3,699	7.4	44,646	42,880	1,966	4.4	4,994	3,261	1,733	34.9
1968	48,633	44,596	4,037	8.3	43,527	41,379	2,148	4.9	5,106	3,217	1,889	39.0
1969	50,146	45,628	4,518	9.0	44,766	42,351	2,417	5.4	5,378	3,277	2,101	39.1
1970	50,738	45,887	4,851	9.6	45,073	42,569	2,504	5.6	5,665	3,318	2,347	41.4
1971	45,633	41,100	4,533	9.9	40,311	38,111	2,200	5.5	5,322	2,989	2,333	43.8
MOTHERS UNDER 20, TEENAGE												
1967	5,503	4,062	1,441	26.2	4,277	3,561	716	16.7	1,226	501	725	59.1
1968	5,409	3,793	1,616	29.9	4,064	3,301	763	19.3	1,318	492	826	63.7
1969	5,627	3,806	1,821	32.4	4,277	3,370	907	21.2	1,350	436	914	67.7
1970	5,924	3,873	2,051	34.6	4,478	3,470	1,008	22.5	1,446	403	1,043	90.5
1971	5,380	3,454	1,926	35.8	4,017	3,147	870	21.7	1,363	307	1,056	79.3
BIRTHS (MOTHERS 20 AND OVER)												
1967	44,334	42,079	2,258	5.1	40,369	39,319	1,250	3.1	3,768	2,760	1,000	26.8
1968	43,224	40,803	2,421	5.6	39,436	38,078	1,358	3.4	3,788	2,725	1,063	28.1
1969	44,519	41,822	2,697	6.1	40,491	38,981	1,510	3.7	4,028	2,841	1,187	21.5
1970	44,814	42,014	2,800	6.2	40,595	39,099	1,496	3.7	4,219	2,915	1,304	30.1
1971	40,253	37,646	2,607	6.5	36,294	34,964	1,330	3.7	3,959	2,682	1,277	32.3

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97 TABLE 4.—SELECTED CHARACTERISTICS OF THE CONNECTICUT-RESIDENT NEWBORN POPULATION, EACH YEAR SINCE 1955

Year	Total number live births	Birth weight of 5½ pounds or less		Nonwhite		Illegitimate		Mothers under age 20 or over age 34		Birth order number of 4 or greater	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
1955	52,339	3,551	[1] 7.1	2,775	5.3	1,061	2.0	9,728	18.6	4,556	8.8
1956	53,564	(1)	(1)	3,026	5.6	1,069	2.0	10,172	19.0	5,641	10.6
1957	56,909	4,269	[1] 7.6	3,453	6.1	1,738	2.2	11,383	20.0	7,235	12.9
1958	56,244	4,164	7.4	3,599	6.4	1,445	2.6	11,352	20.2	8,100	14.6
1959	56,428	4,253	7.6	3,951	7.0	1,598	2.8	11,415	20.2	8,817	15.8
1960	56,650	4,341	7.7	4,017	7.1	1,788	3.2	11,730	20.7	9,217	16.4
1961	57,046	4,441	7.8	4,330	7.6	2,005	3.5	11,967	21.0	9,860	12.4
1962	55,480	4,343	7.8	4,502	8.1	2,304	4.2	11,743	21.2	9,966	18.0
1963	56,476	4,618	8.2	4,958	8.8	2,517	4.5	11,650	20.6	10,405	18.5
1964	56,611	4,653	8.3	5,029	8.9	2,840	5.0	11,506	20.3	10,478	18.3
1965	54,308	4,654	8.6	5,174	9.5	3,141	5.8	11,217	20.7	9,709	17.9
1966	52,131	4,416	8.5	5,082	9.8	3,422	6.6	11,192	21.5	8,247	15.8
1967	49,840	4,109	8.3	4,993	10.0	3,699	7.4	10,292	20.7	7,377	14.8
1968	48,633	3,948	8.1	5,106	10.5	4,037	8.3	9,585	19.7	6,247	12.9
1969	50,146	4,042	8.1	5,378	10.7	4,518	9.0	9,412	18.8	5,914	11.7
1970	50,738	3,923	7.8	5,665	11.2	4,851	9.6	9,460	18.7	5,424	10.7
1971	45,633	3,455	7.6	5,322	11.7	4,533	9.9	8,330	18.2	4,543	10.3

[1] The 1955 to 1957 increase in the percent of "low birth weight" is probably due to a change in the reporting procedure.

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98–1 CHILDREN'S EXHIBIT 1

In the United States District Court for the District of Connecticut

Civil Action No. 15,579

DONNA DOE, LINDA LOE, RENA ROE, SALLY SMITH, AND ALL OTHERS SIMILARLY SITUATED, PLAINTIFFS

v.

NICHOLAS NORTON, INDIVIDUALLY AND AS COMMISSIONER OF WELFARE OF THE STATE OF CONNECTICUT, DEFENDANTS

March 28, 1973

Civil Action No. 15,589

SHARON ROE AND DOROTHY POE, INDIVIDUALLY AND ON BEHALF OF OTHERS SIMILARLY SITUATED, PLAINTIFFS

v.

NICHOLAS NORTON, INDIVIDUALLY AND AS COMMISSIONER OF WELFARE OF THE STATE OF CONNECTICUT, DEFENDANTS

Deposition of Albert J. Solnit, M.D.

98–2 *Appearances:*

FOR THE INTERESTS OF THE CHILDREN:

ROSEN AND DOLAN
By: DAVID N. ROSEN, ESQ.
EDWARD J. DOLAN, ESQ.
265 Church Street
New Haven, Connecticut

FOR THE PLAINTIFFS:

RAYMOND KELLY, ESQ.
35 Village Street
Rockville, Connecticut
FRANK COCHRAN, ESQ.

FOR THE DEFENDANTS:

MICHAEL ANTHONY ARCARI, ESQ.
76 Meadow Street
East Hartford, Connecticut

98–3 ALBERT J. SOLNIT, M.D.

witness called pursuant to agreement, being, first duly sworn in the above cause, testified on his oath as follows:

DIRECT EXAMINATION

By Mr. ROSEN:

Q. Doctor, by whom are you employed?

A. Yale University.

Q. And what is your position?

A. I'm a Professor of Pediatrics and Psychiatry, and Director of the Child Study Center, and Chairman of the Center for the Study of Education.

Q. And can you state briefly your educational background?

A. Yes. I have a Bachelor's Degree from the University of California, a Master of Arts from the University of California, an M.D. from the University of California, and Honorary Master of Arts from Yale University.

Q. And can you give some of your professional background and professional memberships?

98–4 A. Yes. After completing my medical school education, I became fully trained in pediatrics, in psychiatry, child psychiatry, and psychoanalysis. I'm certified in psychiatry and in child psychiatry.

I have the equivalency of—well, I'm called what's called board eligible in pediatrics, and I'm a member of both the American Academy of Pediatrics and the American Academy of Child Psychiatry. I'm President of the American Academy of Child Psychiatry, and the past President of the American Psychoanalytic Association and the Association for Child Psychoanalysis; also, the Secretary-General of the International Association for Child Psychiatry and Allied Professions.

Q. Now, Doctor, have I acquainted you with the provisions of Connecticut Statute 52–440b which relates to a requirement that mothers, certain mothers, be required to name the putative father of children——

A. Yes.

Q. —and institute paternity action?

A. Yes, you have.

Q. And have you, through your training and experience, formed conclusions about what you think the implications of this statute would be in situations for the children of such mothers?

A. Yes, I have.

Q. And you can state in as much length as you think
98–5 is necessary what you feel the major implications of the statute may be in different situations for different children?

A. Yes. I think the most important consequence of that act, in terms of what serves children best, is the threat it offers to the ability of the mother to provide care for the child by requiring the mother to institute a paternity—what would you call it?——

Q. Action.

A.—action. It seems to me that that action does not take into account what the child's needs are in a particular situation. The child, from our best knowledge, requires a steady and affectionate relationship on a continuous basis to at least one parent. And if this is jeopardized or stressed, then the most important needs of the child are placed in jeopardy. By requiring the mother to institute a paternity action in order to qualify for economic support, I believe, from my clinical experience and my work as a child psychiatrist, that that adds an unnecessary stress to the mother's capability of caring for her child. The support for the child, the support for the intactness of that family, should not, in my opinion, be conditional upon such a requirement as that which the law has made necessary.

Q. What do you see as the possible advantages and disadvantages of such requirement with respect to the child's relationship with the child's father?

98–6 A. I would not be able to judge that categorically except in one way. A child thrives from an affectionate relationship to both parents, especially if both parents have a harmonious and an affectionate relationship to each other. So that the child's opportunity for a continuous and meaningful relationship to the father is very important, if it is not at the risk of jeopardizing his tie and attachment to his mother.

In these instances, I assume the mother is the primary parent and the one with whom the child has the primary psychological relationship. That can be enriched, it can be elaborated, and

it can in addition help the child have a better sense of himself if the father is also involved.

However, the law, it seems to me, doesn't seem to promote a harmonious relationship between parents by requiring the mother to institute legal action against a putative father. In that sense it seems to me to work against the best interests of the child, and especially in connection with wanting him to have a good relationship to his father as well as his mother.

Q. Do you think that there might be possibilities—strike that. Do you see a danger in some instances of fathers becoming resentful of mothers or children, and that being harmful to the child?

A. Yes, I could see the father would avoid contact with the child which otherwise he might maintain, and he might
98–7 avoid contact with the mother which otherwise he might maintain, if he feels that the condition for the relationship is one of economic—is one required by the law in order to provide economic support for the mother and child, or mother and children.

Q. What do you see as the implications for the child if a mother is sent to jail for refusing to give the name of a father?

A. That could be, and usually is, catastrophic. If there is a good relationship between the mother and child and the mother is truly the affectionate psychological parent, by putting the mother in prison we remove the most crucial support and guiding influence to assure the sound and healthy development of the child, and especially if it's a young child.

Q. When you say the damage is catastrophic, can you give some estimate of how serious it is to a child to have a parent removed in the early part of its life?

A. For children under the age of five or six to lose that person on whom they count for support, for guidance, for protection and for the stimulating, nourishing love on which a child depends for development, exposes them to, first of all, a feeling of helplessness than which there is no more devastating feeling for a child to have—a feeling of depression, a feeling that you cannot count on your world to be a dependable or safe one. And then in proportion to the adequacy of a substitute for
98–8 the mother, which is not guaranteed by our society at this time, the child may have some recovery from that devastating impact, but the degree of recovery is never whole, it's never a complete recovery, there's always some impairment,

some vulnerability that is brought about with such an abandonment, because that is how the child experiences it—a young child experiences that as an abandonment by the adult on whom they have counted.

Children of that age can endure other stresses, which I would like to illustrate, much better than they can the loss of the maternal love object, the maternal loving person. They can endure hunger, they can endure bombing raids, they can endure natural catastrophies and come through them relatively unscathed psychologically, if they are physically all right. But they cannot escape the devastating impact of the loss of the person who has taken care of them since they were born, helpless as an infant into this world.

Q. Have you found it to be true in many instances that children who do not know who their father is are curious and have a psychological need to know the identity of their father?

A. I would say it's almost universal that a child whose father is absent is a child who is curious, who tries to imagine, tries to find ways directly and indirectly to understand who his father or her father is, what they were like, how they grew up, what they're about, what they represent, and what kind of
98–9 guiding influence they could be for the child in future experiences.

Q. Is it, in your opinion, invariably in the child's best interest to be told the name of the father?

A. No. I think there are instances in which it would appear that the knowledge of who the father is, of knowing the father's name, is not guaranteed to serve the child's best interest. There's a difference between knowing the father's name and knowing the father, and wanting to know who the father is, being curious and trying to fill in through one's imagination or through one's sources of information who the father is and what he's like.

The difference is this: If you take the instance of adoption, of children who are adopted from the earliest infancy on, many of our societal customs, convictions are that it would be best, since the true psychological parents are now the adopted parents, to not complicate the child's life or the lives of the two sets of adults involved, by expecting the child to know who the biological parents were. Therefore, it is a custom, in some places a law, that the actual identity of the biological parents is a

confidential matter not to be given to either the adoptive parents or the adopted children.

I have found that that can work very well. And, indeed, if that's the way people prefer it and it works out better, there is no reason why a child cannot overcome and master and thrive, through mastery of that absent knowledge, so
98–10 long as the adequacy of the parents who are in charge of his upbringing from infancy on is an adequate one. So in that sense it's not required.

I also know many children who have been born out of wedlock where the mother and the father have decided to not become married, where the mother has preferred to relate her child to another male figure than the one who is the biological father. And, again, although it may not be ideal, it is not a permanent hindrance to an adequate development on the part of that child.

Q. In your opinion, where do you think, from the perspective of the child's interests, where do you think the power to make a decision about whether to pursue paternity proceedings ought best to be placed?

A. From the point of view of the child, which is who I speak for, it would be the mother who ought to make that decision.

Q. Why do you think so?

A. Because she's the one who has the care and the responsibility and the loving affectionate bond with that child, and therefore a decision as to what's in his best interests ought to first come from her.

Mr. ROSEN: Anyone who wants to question the doctor in the next five minutes? Off the record.

(Discussion off the record.)

CROSS-EXAMINATION

98–11 By Mr. ARCARI:

Q. Doctor, from your testimony I gather that you are under the impression that section 52–440b is in existence purely for economic reasons. Is that your opinion of it?

A. I have no comprehensive understanding what motivated the people who drew up that law.

Q. In other words, I got the impression that you felt that Section 52–440b was in existence or is in existence to allow anyone pursuing that statute to obtain support for a child born out of

wedlock, or is the statute concerned more with the support, the financial aspect?

A. Right, I understood it to be more a matter of financial support, but whether it had other motives in it, I didn't know.

Q. You understood, generally speaking, that if the mother was forced to disclose the name of the father this could cause stress on a child——.

A. Yes, it could.

Q. —as far as the care of a child?

A. If it were forced upon the mother, yes.

Q. Now, there are some cases, I take it, where, if the child knew his or her father, that the results might be beneficial?

A. I would not separate how that's done from what is done. In other words, if the mother, as an act of love toward
98–12 both the child and toward the father, arranged for that father and child to know each other and be together, yes, that would be favorable to the development of the child.

Q. It has something to do with the approach——.

A. It has to do with the spontaneity and the representation it has for loving attachments.

Q. Right. And in this action where we're dealing in a relationship between father and child, the relationship could develop a healthy normal relationship?

A. If it's within a proper context.

Q. The only thing I want to clear up is, I believe you said—correct me if I'm wrong—but I think you indicated that if a child was told later, later on, the name of his or her father, that this would not necessarily be—this would work against the interests of the child. Am I correct in making that statement?

A. No. I didn't take a stand on that.

Q. I see.

A. I simply said that a child can benefit from knowing who the father is. I also said a child can accept the deprivation or frustration—frustration of not knowing who the father is—and, with a proper kind of attachment to the primary psychological parent, be able to use that frustration in a way that's favorable to his or her development.

Q. Right. In accordance with those comments, I think
98–B you indicated that it's possible that a child, under the improper circumstances, I guess, if the name of the father was disclosed to the child, it could build resentment within the father against the mother?

A. It could be a negative factor because it could be done with two influences that make it negative: One, the mother is compelled to do it and does it out of fear of the law or the consequences of not being able to comply with the law. That means it's already an act in which she's doing it against her own free choice or her own spontaneous impulse. And, secondly, it tends to put the father—and this, I think, is a very detrimental factor—it places the father in a negative light for the child and says to him, "This is bad or this is undesirable, this has to be required by the law," and it gives him a negative image of the father.

Q. Right. Well, in any event, you would have to be fair and say that this does not necessarily happen in all cases. There would have to be some cases where perhaps the father takes a different view entirely. In other words, he doesn't have a negative attitude towards——.

A. You mean where the mother would be required to——.

Q. No, in any circumstances, whether the mother involved voluntarily discloses the name or, in some cases, where she might be forced to disclose the name.

98–14 A. Not where she's forced to. I cannot see any way in which that could be helpful to the child.

Q. In other words, you're saying if the mother were forced to disclose the name of the father involved, that, first of all, would perhaps have a negative result on a child—I say "perhaps"——.

A. Likely to.

Q. All right, likely to—but would it always have a negative effect on the father where the resentment would show up? In other words, I'm not saying in every case now.

A. Oh, yes, I think you can be fairly certain that the father invariably is going to feel resentful and feel negative—well, he's going to feel not only resentful but he's going to feel unable to invest in the relationship with his child and child's mother in a positive way. He's going to tend to avoid that relationship rather than to be available to it should it be desirable.

Mr. Rosen: Off the record.

(Discussion off the record.)

Q. You're saying in every case the father would develop this negative attitude. I just want a yes or no, Dr. Solnit, under the so-called circumstances——

A. Well, in human behavior, you learn very quickly to never say always—almost always.

Q. All right, almost always. We haven't pinned this
98–15 thing down as to time. In other words, dealing with the example we had, if the mother were forced to give the name of the father, and of course he took, in other words, a negative attitude towards the relationship, if you recognized there is resentment at first, could this resentment be dissipated where eventually a relationship could be built between the father and child——

A. It's always possible for these things to be overcome and dissipated in the light of subsequent corrective experiences, but it's unlikely to, and it puts at a disadvantage, and at significant risk, future experiences. They will tend to always then be negative rather than tend to be positive. So, yes, it's possible but unlikely.

Mr. ROSEN: Mr. Kelly has one question.

CROSS-EXAMINATION

By Mr. KELLY:

Q. Doctor, would it ever be to a child's advantage, if he's in a family situation where he has brothers or sisters from a previous—you know, they were born to the mother by a previous father in the marriage relationship—for him to know that his father was not the same individual that fathered the first two children?

A. That kind of knowledge need not be necessarily negative.

It has to be interpreted in the light of the setting and the
98–16 context in which it takes place. It may be negative, it may be positive. It often can be positive because children tend to form a community of interests and tend to form friendships and attachments which are terribly important to them, and therefore if they had different fathers, that's not necessarily a negative factor.

Q. But if a child thought his father was the same father of his brothers and sisters and that turns out not to be true—.

A. That often is a jolt and a child can overcome that jolt. It depends on how it's presented. If it's presented as something that's compelled by law——.

Q. If it were presented in a court situation?

A. In a court situation as compelled by law and with an implied criticism, then it's very detrimental because it means somehow society is prejudiced against that child and his forbears. But if it's presented as something which people come to by themselves of their own volition and as a result of their own experiences, there isn't anything that necessarily says that that's negative. That's what I meant by "context." When compelled, when forced, then the child is very likely to experience that as not only a negative but a threatening kind of experience.

Mr. ARCARI: I do have a couple of quick questions. I think the doctor can very quickly answer.

Mr. ROSEN: Ask him one.

98–1 By Mr. ARCARI (continued):

Q. Where a child does not know the name of his father, can this build up stress in a child's mind?

A. Where a child does not know the name of the father, it tends to create a frustration, a challenge which the child can overcome.

Q. And do you have any opinion as to what happens if the child should find out who his father is later in life, anything at all?

A. I think I've answered that by saying it depends on the context in which it comes about. It can be a very positive thing or it can be very stressful.

Q. Yes. And all your testimony today, this is based, I believe you indicated on clinical experience?

A. On clinical experience, on a wide reading of the subject, on being the editor of a number of professional journals, which I didn't list because of the shortness of time. I'm the Chief Editor of the "Psychoanalytic Study of the Child." I'm on the editorial board of "Pediatrics." I'm on the editorial board of "Children." I'm on the editorial board of "Hospital and Modern Psychiatry," and a few others.

Q. But anyway, it's partly clinical?

A. Partly clinical, partly out of my studies on the subject.

98–18 Mr. ARCARI: That's all.

Mr. ROSEN: Thank you very much, Doctor.

19–20 • • • • •

99–1 CHILDRENS EXHIBIT 2

In The United States District Court for the District of Connecticut

April 4, 1973

Civil Action No. 15, 579

DOE, ET ALS., PLAINTIFFS

v.

NORTON, DEFENDANT

Civil Action No. 15, 589

ROE, ET ALS., PLAINTIFFS

v.

NORTON, DEFENDANT

Deposition of Caroline E. Packard

Appearances:

FOR THE PLAINTIFFS (Guardian ad litem)
ROSEN & DOLAN
265 Church Street,
New Haven, Conn.
By: Edward Dolan, Esq.

99–2 FOR THE PLAINTIFFS (Roe and Doe)
Raymond J. Kelly
35 Village Street,
Rockville, Connecticut

FOR THE DEFENDANT:
Michael Arcari, Esq.
Assistant Attorney-General
State of Connecticut
76 Meadow Street
East Hartford, Connecticut

. . . Deposition of CAROLINE E. PACKARD, taken on behalf of the Plaintiffs in the above-entitled cause, wherein Roe and Doe, et als, are plaintiffs and Norton is Defendant, pending in the United States District Court, District of Connecticut, held on April 4, 1973, held at the offices of the Welfare Department, State of Connecticut, at 1000 Asylum Street, Hartford, Connecticut, before Paul D. Landman, a Notary Public in and for the State of Connecticut, County of Hartford, pursuant to notice, at which time the parties were represented as hereinbefore set forth . . .

STIPULATIONS

99–3 All objections, except as to form, are reserved for the trial.

The reading and signing of the deposition are waived. Formalities as to notice and proof of the authority of the Notary Public are waived.

CAROLINE E. PACKARD

the witness named in the notice, having been duly sworn in the above-entited cause, testified on her oath as follows:

DIRECT EXAMINATION

By Mr. DOLAN:

Q. Mrs. Packard, who is your employer?

A. Connecticut State Welfare Department.

Q. How long have you been employed by that Department?

A. Since July of 1965.

Q. And in what capacity are you employed by the Welfare Department at this time?

A. I am Chief of Policy Development and Staff Services.

Q. How long have you held this position?

A. I believe it was January, 1971 that I was appointed as the Chief.

Q. How long have you been part of the staff with respect to the development of policy?

99–4 A. Since July, 1965.

Q. Could you describe briefly, please, what your duties are with respect to that job?

A. In general I direct the development of policy to implement Federal regulations, state laws, co-ordination of laws and regulations, and I issue this material to the District Offices for their operation of the policy, that is, in general.

Q. Thank you. While you have been employed in that capacity has the naming of the father of an illegitimate child by a welfare mother ever been made a condition of eligibility for that child?

Mr. ARCARI: I'm sorry, excuse me.

(Discussion off the record.)

The WITNESS: I believe that at the time of the court injunction, which I think was in 1968 when the court said that you cannot require a mother to name the father, as we had done in a few previous cases when we did say it was a condition of eligibility, then it was taken to court and there was an injunction against this. Then we did not have a correct interpretation or direction from the Attorney-General's office so we continued to make it a condition of eligibility for the mother, but not the child. Then that was stopped and from that point on it has not been a condition of eligibility.

It was in this period—I would have to check policy to
99–5 get the dates of when it was a condition of eligibility.

Q. Did you play a role in the development of that policy?

A. All policy since 1965, including that policy, has been one that I have played a role in.

Q. Could you tell us briefly what role you played in the development of that specific policy?

A. The policy which said that she must name the father to be eligible for assistance, to be a condition of eligibility?

Q. That's right.

A. I'm sorry, I don't have those dates but a few months prior to the time the case was heard in court there had been a change in policy at the direction of the Attorney-General and the Commissioner of Welfare, to say that we must require that a mother name the father of the child. Prior to that we had requested that she name the father, but if there were some good reason why the child's father should not be named we had discretion not to name the father, not to require the mother to name the father. Then at the direction of the Attorney-General, the Commissioner followed his direction and we put in the policy that she must name the father of the child.

Q. But did the Attorney-General request this on his own initiative or did he issue this directive with respect to
99–6 making it a condition of eligibility at the request of the Department?

A. We did not request him. I don't know the background and his discussion with the Commissioner at that time.

Q. Subsequent to that was the swearing out of warrants for the arrest of the alleged fathers of illegitimate children ever made a condition of eligibility?

A. I would have to check policy. You know, I can't give a definitive statement. I would rather not, you know, take a guess and be wrong.

Q. Are you familiar with Section 52–440b of the Connecticut General Statutes?

A. Which statute is that?

Q. This is the statute which seeks to compel the mother of illegitimate children on welfare to name the father of such children.

A. Yes.

Q. You are familiar with that?

A. Yes.

Q. What role did the welfare policy division play in the implementation of that statute?

A. Well, after discussions on the top administrative level, after the law was passed, and discussions with the Attorney-General's office as to ways to implement the law, I was then given the direction that we should implement the law.
99–7 I worked, or people under my direction worked out the procedural aspects of following the law.

Q. But did you play any role in the promulgation of this law to the Legislature?

A. No.

Q. What was the planned effect of this law on the financial structure of the Welfare Department?

A. I have no knowledge of the people who wrote the law, what they had planned.

Q. Well, from the point of view of the policy department of the Welfare Department, what effect did you expect that it would have on the financial structure of the Department?

A. I wasn't concerned with what effect it would have. We would have to carry out the law so there was no study made to my knowledge to see what effect there would be.

Q. Has any study been made since to determine what effect this has had on the financial structure of the Welfare Department?

A. Not to my knowledge, and I do not believe there has been any.

Q. To the best of your knowledge did the Department take a position with respect to the passage of such a law?

A. No, not to my knowledge.

Q. To the best of your knowledge is there any statistical data available to measure the cost of support actions and the
99–8 cost of collection against the amount of money actually raised in this kind of a situation?

A. Not to my knowledge.

Q. Let me ask you, please, some questions with respect to your role in the actual implementation of the statute after it had been passed. Do you have with you the pertinent Welfare Department regulations which were issued in the Welfare manual subsequent to the passage of the law?

A. Yes.

Q. And could we enter them as exhibits into the record?

A. Yes.

(The above-described eligibility provision—Child born out of wedlock—was received and marked as Plaintiff's Exhibit 2 for Identification.)

Q. When the pertinent new sections of the Welfare Department Manual were added were there any additional instructions other than those which you have already made an exhibit which were submitted to the District Offices?

A. There have been two memoranda sent to the District Office. One was completely related to the fact that it is not an eligibility requirement for the mother to name the father of the child because in some districts, because of new personnel and perhaps they are not familiar with policy, they had said that she would have to name them. So we sent a memo saying
99–9 that this was not a fact of eligibility. "You must follow the policy."

Then on another occasion this came to our attention again that the policy had not been followed so we sent another memo. We again said it was not a condition of eligibility and this memo also said it was not a factor of eligibility when the mother is advised that she is subject to being cited into court and compelled to testify by the court. The latter memo is dated January 6, 1973 and the first memo I referred to is April 12, 1972. I have them here.

Mr. ARCARI: The first one was January what?

The WITNESS: The first one I mentioned was April 12, 1972 and the second one was January 6, 1973.

Mr. DOLAN: Could we also have those marked as Plaintiff's Exhibits 3 and 4?

(The April 12, 1973 memorandum described above was received and marked as Plaintiff's Exhibit 3 for Identification.)

(The January 6, 1973 memo described above was received and marked as Plaintiff's Exhibit 4 for Identification.)

Q. In addition to the printed material which has already been supplied and marked for identification, were any other instructions sent down from the main office to the departments with respect to the implementation of this statute?

99–10 A. Not directly. I know that when any new policy goes out, the district is expected to have their supervisory meetings, or whatever kind of staff development program they have. They will instruct the workers to follow the policy and explain the policy. But there were no other specific directions. They are expected to implement whatever policy is issued.

Q. Were there specific departmental staff meetings organized at the local level to discuss the implications of this and the method of implementation?

A. I don't really know what the districts actually did.

Q. Were there any form letters prepared to be sent to such mothers as refused to provide the information requested in the statute?

Mr. ARCARI: One clarification. Form letters as to what? You are talking about any form letter at all?

Mr. DOLAN: No. What I asked was, were there any form letters prepared to be sent to mothers who refused to comply with this statute informing them of what next steps would be taken with respect to them.

The WITNESS: Not from this central office.

Q. Do you know of any which exist on the local level?

A. No, I don't.

Q. With respect to this statute and the implementation of it, were there correspondences between the Department
99–11 and the Department of HEW?

A. I don't recall any. When we do issue policy, however, we send a formal submittal to them to advise them of the issuance of new policy, so we would have that kind. But other correspondence I don't remember.

Q. If there had been any such correspondence would they have been made through you?

A. Either through me generally, or if somebody else for some reason would be writing, then generally it would be cleared through me.

Q. And you remember no such specific communication?

A. I don't remember any.

Mr. DOLAN: I don't have any further questions, thank you.

Mr. KELLY: I would like to ask some questions.

CROSS-EXAMINATION

By Mr. KELLY:

Q. Does the Department of HEW normally reply to any policy statements that you may submit to them?

A. Yes, they either accept it or they don't accept it.

Q. But they would send something back to you?

A. Yes.

Q. And you did not receive anything with relation-
99–12 ship to 52–440b?

A. I would have to check to see.

Q. Would you check on that?

A. I would have to check to see if a submittal has been returned.

Q. When did you submit it to HEW?

A. I would have submitted it around the time that it was issued in policy.

Q. And when was that?

A. That was August of '72. Yes, it was effective August of 1972 so it would have been sometime after that date.

Q. Mr. Dolan asked you earlier about policy that had been promulgated back in 1968 involving the refusal to grant welfare benefits to a recipient if they didn't name the father of the child. Did you also send those policies in to HEW at that time?

A. Yes.

Q. Did you receive a response to those?

A. I would imagine so. I can't give you an answer unless I would check the records.

Q. Has the Policy Development Section which you are in charge of done any studies to show what kind of benefits a child can obtain under 54–440b, and by that I mean Social

Security, Unemployment Compensation and Workmen's Compensation benefits?

99–13 A. I don't know what you mean by "studies." We haven't had a formal study, but we do know that when a child has a legal father he can get certain benefits.

Q. But there has been no formal study done to ascertain dollar amounts that would come to the benefit of the child?

A. That's right. There has been no formal study made, actual dollar amounts study.

Q. And this policy has been in effect since August of 1972?

A. That's correct.

Q. Is your department, your section of the Welfare Department, the one that would normally issue such a study?

A. It would actually be conducted by some other section. If a decision were made to make such a study, we could participate in setting up some kind of format for a study, if this were to be, but we have a Research and Statistics Division that I would assume would collect data, if a study were set up, and they would collect the information.

Q. The authorization for a study on the financial impact of 52–440b, as far as benefits to the child go, would come from your office?

A. The Commissioner of Welfare would authorize the study.

Q. To your knowledge there has not been any study done?

A. To my knowledge there has been no study.

Q. Just to clarify another point, Mr. Dolan asked you
99–14 if the financial impact of 52–440b had been assessed by the Welfare Department, and you stated, "No, not to our knowledge."?

A. That's correct.

Q. Is any study planned through your office?

A. No, not to my knowledge.

Q. You also mentioned earlier in discussing prior welfare eligibility standards back in 1968 that there had been a policy in the Welfare Department concerning when a mother would not be required to name the father?

A. That's correct.

Q. Do you remember what those reasons were? You mentioned "if there were good reasons." I think that was your wording.

A. I don't remember the exact criteria. I remember it said in the judgment of the worker, and there were some criteria spel-

led out, but I didn't come prepared to answer that. I would have to check.

Q. Would you check that also, please?

A. Yes.

Q. Are there any criteria under 52–440b to vest discretion in the worker similar to that criteria of 1968?

A. Since the law doesn't give any discretion there is no policy for discretion.

Q. Okay. Does your Policy Development Section keep any statistics involving cases that have gone to court where
99–15 the mother has been compelled to name the father of the child?

A. There is no collection of any such statistics at a central location, in my Division or any other, to my knowledge.

Q. So there is no collection of raw data about these 52–440b cases?

A. No, not to my knowledge.

Mr. KELLY. I have no further questions.

(Recess.)

Mr. ARCARI. No questions.

Mr. DOLAN. I would like to ask a few more.

RE-DIRECT EXAMINATION

By Mr. DOLAN:

Q. First I would like the record to indicate that Miss Packard has agreed to provide all counsel of record with the three following items: Number one, the Welfare Department policies with respect to the naming of illegitimate children prior to the court cases in Doe vs. Shapiro and Doe vs. Harder.

Two: All communications and replies between the Department and the Department of Health, Education, and Welfare with respect to the Welfare Department policies which led up to the suits of Doe vs. Shapiro and Doe vs. Harder.

99–16 Three: The submittal and replies between the Department and the Department of Health, Education, and Welfare with respect to the policy which came about as a result of 52–440b.

Mr. ARCARI. Let's say this means everything in relation to the submittal, any reply in relation to the submittal.

Mr. DOLAN. Fine.

Mr. ARCARI. Can we put that on the record?

Mr. DOLAN. I think it is. I would like to ask one final question.

You stated that prior to the regulations leading up to the cases of Doe vs. Shapiro and Doe vs. Harder that there was an area of discretion available to the Welfare worker, is that correct?

The WITNESS. That's correct.

Q. Under 52–440b dealing with the compulsion we have been discussing, does anyone in the Welfare Department at any level have the discretion to determine that the mother does not have to so testify?

A. I have to read the law again to make sure which part of the law is the part where the mother must be advised that she is subject to be cited in the court because I think—in using the numbers—I may be confused about what you have been referring to.

99–17 (Discussion off the record.)

The WITNESS. This is the law that says if the mother discloses the name of the father, such mother may be cited to appear before any judge of the Circuit Court and compelled to disclose the name, under oath, but there is no discretion provided for in policy not to follow this direction from the law.

Q. And that would apply to everyone at all levels of authority in the Welfare Department?

A. That's correct.

Mr. DOLAN. Thank you.

Mr. ARCARI. I have no questions.

RE-CROSS EXAMINATION

By Mr. KELLY:

Q. May I ask one or two more questions? What was the policy of the Welfare Department prior to 54–440b, and after the injunctions against conditioning eligibility on the naming of the father of the child?

A. These two things came at different points in time. This particular section of citing the mother to appear before the judge came in 1971. Prior to that, to my knowledge, there was nothing in the law that read just the way this was. It was in 1968 when there was an injunction that said the Welfare
99–18 Department may not make it a condition of eligibility to have the mother name the father. At that point when

the injunction was issued saying that we could not make her name the father, we did not make her name the father as a condition of eligibility. We would ask her if she refused to name the father. If sh[illegible]id, we did nothing, not until the 1971 Legislature said that [illegible]e may be cited into court and compelled to testify. We then implemented that law, and although we do not cite her in court, the provisions are made and we supply her with an attorney so she may defend herself. We have followed that law since this policy was issued.

Q. Let me clarify one thing: Was there a period after the passage of 52–440b before you implemented the policy when nothing was done if a mother refused?

A. Yes.

Q. And are you also stating that the Welfare Department appoints an attorney to represent the mother of the child?

A. We refer it to an attorney who then is the one who, I imagine, makes the decision of bringing it into court.

Q. But obviously that attorney does not represent the mother?

A. No, I'm sorry, I used the wrong words.

Q. The purpose of that attorney is to act as an advocate of the Welfare Department in the Circuit Court?

99–19 A. No, this is not my understanding. It is not the Welfare Department who is requiring her to go—those are the wrong words.

Q. Compelling her?

A. We are not the ones citing her into court and compelling her to name the father.

Q. Who is?

A. It is the court tha can compel her, that cites her into court and compels her.

Q. Who brings the petition to ask the court to cite her?

A. Not the Welfare Department.

Q. Who?

A. I don't know who does it.

Q. Who pays the attorney to cite the woman in before the court?

A. I think the Welfare Department pays.

Q. So wouldn't it be fair to say then that the Welfare Department employs the attorney as an agent to have the mother cited in before the court?

A. I don't think so. We have to follow the law.

Q. But you pay the bill for the attorney?

A. That's right.

Mr. KELLY. That's all.

By Mr. ARCARI:

99–20 Q. When you pay the bill for the attorneys that you refer this matter to, for the attorney to take action whether or not the mother should be cited before the court, you pay the bill due to the fact that the mother is on welfare assistance, is that right?

A. That's right.

Q. She has no funds of her own except as Welfare provides for her?

A. That's right.

Q. Just to clear this thing up a little bit, is it your understanding that if a mother refuses to disclose the name of the father of a child in question—I'm talking about a mother receiving welfare assistance—the matter is generally referred to an attorney and it is up to him to take action on the law?

A. That's right.

Q. Once the matter is referred to the Circuit Court, if it goes that far, it's up to the Court to decide whether or not the mother should disclose the name of the father?

A. That's right.

(Discussion off the record.)

Q. In reference to Section 52–440b do you have any knowledge whether or not that applies only to welfare recipients?

99–21 A. My understanding is that it applies to everyone, not just recipients.

Q. Therefore, let me know if this is correct or not, a correct understanding on my part of your testimony, that a mother who is not receiving welfare assistance can be referred to the Circuit Court to disclose the name of the father, is that your understanding of 52–440b?

A. Yes.

Q. And to go one step further, in that latter case I just pointed out the Welfare Department would have nothing to do with that type of case because the mother is not on welfare assistance?

A. That's correct.

Q. Since the Welfare Department was placed under an injunction back at approximately 1968 when disclosure of the

father was a condition of eligibility, the Welfare Department has been following the injunction, has been following the law up until the present time, including the law under 52–440b?

A. That's correct.

Q. One more question. After 52–440b came into existence was there a time period that was needed to develop the policy to implement Section 52–440b?

A. Yes, that's right.

Q. We are talking about Welfare policy now.

99–22 A. Yes.

Q. Is that usually the situation, that any law affecting Welfare has to have a period of time in order to develop the policy?

A. That's correct.

Q. To issue it to various districts?

A. That's correct.

Q. And when policy is worked up under a particular law, in other words, under a particular welfare law, in some cases does it involve a substantial period of time?

A. Yes.

Q. Depending on what the problems are?

A. That's correct.

Q. Correct me if I am wrong, but in 1971, I believe that's when Section 52–440b came into existence, was that the same period of time when the flat grant system went into effect?

A. We were working on it. It took a number of months, over a year, and we were working intensively all during the months in 1971 and 1972.

Q. When you say "working on it", you mean working on policy?

A. There were many detailed things that had to be developed to arrive at a flat grant system, and the Policy Section was heavily involved in that.

Q. And did this have a bearing on the work-up or

99–23 development of the Welfare policy under Section 52–440b?

A. That's right.

Q. Specifically could that have some effect as to delay?

A. That, among other developments.

Mr. ARCARI. I have no further questions.

(Discussion off the record.)

Mr. DOLAN. That's all.

(The deposition ended at 3:15 PM.)

CERTIFICATE

99–24 STATE OF CONNECTICUT

County of New Haven, ss:

I, Paul D. Landman, a Notary Public duly commissioned and qualified in and for the County of New Haven, State of Connecticut, do hereby certify that pursuant to notice there came before me on the 4th day of April, 1973, at the offices of the State Welfare Department, 1000 Asylum Street, Hartford, Connecticut, the following named person, to wit, CAROLINE E. PACKARD, who was by me duly sworn to testify to the truth and nothing but the truth of her knowledge touching and concerning the matters in controversy in this cause; that she was thereupon carefully examined upon her oath, and her testimony reduced to writing under my supervision; and that the deposition is a true record of the testimony given by the witness; and that the reading and signing of the deposition were waived by counsel.

I further certify that I am neither attorney or counsel for, nor related to or employed by, any of the parties to the action in which this deposition is taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto or financially interested in the action.

In witness whereof I have hereunto set my hand and affixed my notarial seal this 17th day of April, 1973.

PAUL D. LANDMAN,
Notary Public.

My commission expires:

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Connecticut State Welfare Department
Social Service Policies—Public Assistance

99–26 [Manual Vol. 1]

ELIGIBILITY PROVISIONS

Child Born Out of Wedlock P–3460

P–3460 *Paternity Proceedings*

Worker's Responsibility in Assisting Mother to Plan for Her Child Following Situations:

1) If she wishes to keep the child
2) If she wishes to place it with a relative
3) If she is to surrender the child for adoption

Mother to Keep Child or Place in Relative Home

Since both parents are responsible for support, proceedings for establishment are initiated.

1. *Mother Alleges Paternity*

a. If the mother is able to discuss her situation freely with the Case Worker and names the father, the worker completes the names of the father and child(ren) on the Form W–161 and has the mother sign the Affirmation of Paternity Section of the form. Her statement is notarized.

The worker then interviews the father and endeavors to obtain his voluntary acknowledgement of paternity (four notarized copies of the form are required).

In some instances the Resource Unit is asked to obtain the Acknowledgement of Paternity. The executed forms are then referred to the Family Relations Division of the Circuit Court by the liaison worker in the Resource Unit.

b. If the father refuses to acknowledge paternity, he is advised that the Department will direct the mother to institute court action. He is also advised that the Welfare Department is legally authorized to institute and pursue proceedings to establish the paternity of any child supported in whole or in part by the Department, if the mother fails to do so.

c. If an Acknowledgement of Paternity is taken prior to the birth of the child, Form W–161 is completed and under the heading "Birth Date", the words "To Be Born on or About _____" are inserted. After the child is born the father is then requested to execute a current acknowledgement of Paternity Form W–161 listing the name and birth date of the child. The mother's signature is secured on the Affirmation of Paternity Section of the current Acknowledgement and the Affirmation of Paternity is then notarized.

Effective: 8–17–71

99–27 3460 *Paternity Proceedings*
3460.1 *Legal Provisions*

1. State law

a. Sec. 52–435a "Complaint" states in part:

> Proceedings to establish paternity of a child born or conceived out of lawful wedlock, including one born to, or conceived by, a married woman but begotten by a man other than her husband, shall be instituted by a verified petition of the mother, or expectant mother with summons and order, filed in the circuit court for the circuit in which either she or the putative father resides • • • No such petition shall be brought after three years from the birth of such child, or after three years from cessation of contribution toward support of the child by the putative father, whichever is later; provided the provisions of Section 52–590 of the 1963 supplement to the general statutes shall be applicable to this section • • •

b. Sec. 52–435b "Compelling Mother to Testify" as amended by the 1971 General Assembly, states:

> The mother of any child for whom adjudication of paternity is sought in paternity proceedings shall not be excused from testifying because her evidence may tend to disgrace or incriminate her; nor shall she thereafter

be prosecuted for any criminal act about which (1) she testifies in connection with such proceedings, or (2) she makes any statement prior to such proceedings with respect to the issue of paternity.

c. Sec. 52–435c. "Compelling Putative Father to Testify".

The putative father of any child for whom adjudication of paternity is sought in paternity proceedings shall not be excused from testifying because his evidence may tend to disgrace or incriminate him; nor shall he thereafter be prosecuted for any criminal act about which (1) he testifies in connection with such proceedings or (2) he makes any statement prior to such proceedings with respect to the issue of paternity.

Effective 8–1–72

d. Sec. 52–440a "When State or Town May Maintain Suit"

The state or any town interested in the support of a
99–28 child born out of wedlock may, if the mother neglects to bring such petition, institute such proceedings against the person accused of begetting the child, and may take up and pursue any petition commenced by the mother for the maintenance of the child, if she fails to prosecute to final judgment. Such petitions may be made by the welfare commissioner or the town welfare administrator on information or belief. The mother of the child may be subpoenaed for testimony on the hearing of the petition * * *"

e. Sec. 52–442 "Judgment and Order of Court" states in part:

If the defendant is found guilty, the court shall order him to stand charged with the support and maintenance of such child, with the assistance of the mother if she is financially able, and to pay a certain sum weekly until the child attains the age of eighteen years * * *

f. Sec. 52–440b

(a) If the mother of any child born out of wedlock, or the mother of any child born to any married woman during marriage which child shall be found not to be issue of the marriage terminated by a divorce decree or by decree of any court of competent jurisdiction, fails or refuses to disclose the name of

the putative father of such child under oath to the welfare commissioner, if such child is a recipient of public assistance, or to a selectman of a town in which such child resides, if such child is a recipient of general assistance, or otherwise to a guardian or a guardian ad litem of such child, such mother may be cited to appear before any judge of the circuit court and compelled to disclose the name of the putative father under oath and to institute an action to establish the paternity of said child. (b) Any woman who, having been cited to appear before a judge of the circuit court pursuant to subsection (a), fails to appear or fails to disclose or fails to prosecute a paternity action may be found to be in contempt of said court and may be fined not more than two hundred dollars or imprisoned not more than one year or both.

99–29 3460.22 *Responsibility for Support and Establishment of Paternity*

If the mother decides to keep the child or to place him in a relative's home, both parents are responsible for support and proceedings for the establishment of paternity are initiated. Information about the alleged father is obtained from the mother of the child. If he resides in the State, an interview is held to discuss the situation and to secure his Acknowledgement of Paternity,

The mother is encouraged to name the father, by Affirmation of Paternity, under oath and to file a petition to establish paternity and support.

If the mother is unwilling or unable to name the father, she is still eligible for assistance to meet *her own needs, the needs of the child in question, and the needs of any other children in the family*, provided all other eligibility requirements are met; however, if she is *unwilling to name the father*, she is informed that she is subject to be cited to appear before any judge of the Circuit Court, be compelled to name the putative father and to institute an action to establish paternity of the child.

In all situations, assistance is granted promptly when all eligibility requirements are met, whether or not Court action is pending to establish paternity or to secure support.

In situations where the mother names the father, but then is unwilling or neglects to file a petition or to pursue a petition she started, the Department, under Section 52–440a of the Connecticut Statutes, institutes such proceeding. In this in-

stance, the mother may be subpoenaed to testify and treated as a hostile witness.

99–30 *2. Paternity Not Alleged by the Mother*

a. If the mother is unwilling to name the putative father she is informed by the worker that she will be cited to appear before any judge of the Circuit Court and compelled to disclose the name of the putative father and to institute an action to establish the paternity of the child. The worker refers the matter to the Resource worker on a Form W–109. Central Office will provide a list of attorneys to each Resource Unit; referral will be made to an attorney on the list for the purpose of citing the mother to appear before the Court. The fee for this service will be $75 if the mother names the father after the attorney prepares the petition and prior to a court hearing and $150 if the matter goes to a full hearing before the Court. The same fee prevails regardless of the number of children and/or fathers involved. If, after the hearing, the mother decides to cooperate and initiate the paternity action herself, she is of course free to contact an attorney of her own choice. A fee schedule has been established for attorney's fees in connection with paternity proceedings when the mother has named the father (see Index No. 3460.24). If she refuses to cooperate, the Department will initiate a paternity action under the terms of Section 52–440a (see Index No. 3460.1). The same attorney who cited the mother into court will be used to bring the paternity action in such cases.

b. When paternity is established and the Court has determined the amount of support to be paid, payments are made to the Department of Finance and Control and the State Welfare Department meets the continuing needs of the eligible members fully.

c. If the mother is *unable* to name the putative father, this is recorded in the case record.

3. Referral to the Circuit Court

When the hospital cost has been paid by the Department, the worker directs a memorandum to the Medical Payments Section, Central Office, requesting a statement of hospital charges.

The worker then forwards the following to the liaison worker of the Resources Unit by means of a Form W–109 for referral to the Circuit Court in which the mother resides:

a. The executed Form W–161, "Acknowledgement of Paternity and Affirmation of Paternity";

99–31 b. The amount of hospital charges;

c. Form W–326, "Referral to the Family Relations Division of the Circuit Court";

d. The amount of assistance paid for the care of the child in question;

e. Pertinent information regarding the acknowledged father's financial circumstances.

4. Support Payments

When paternity is established and the Court has determined the amount of support to be paid, payments are made to the State and the Department meets the continuing need of the eligible members fully.

Effective 8–1–72

[INTERDEPARTMENT MESSAGE]

99–32 To: Intake Unit Supervisors and District Directors, State Welfare Department Central Office.

From: Nicholas Norton, Deputy Commissioner.

Subject: Paternity—Mother Unwilling or Unable to Name the Putative Father.

Attorneys in the community have complained that some of the workers in the Intake Units and in the Income Maintenance Units are requiring as a condition of eligibility that the mother who is unable or unwilling to name the putative father go to the Court to name the father or to discuss support.

It is obvious that the workers are not following policy which has been in effect since March 25, 1970 and which was based on an order of the United States District Court.

The policy is contained in Manual Volume 1, Index No. 3460.22 and states:

> If the mother is unwilling or unable to name the father she is still eligible for assistance to meet *her own needs, the needs of the child in question and the needs of any other children* in the family, provided all other eligibility requirements are met.

When the mother is unwilling or unable to name the father, policy contained in P–3919 "Procedure Regarding Support—AFDC Absent Parent Cases" *is not applicable.* The name of the

father *must be known* in order to institute proceedings to secure support.

It is imperative that workers be advised immediately of the requirement that policy be followed.

Please acknowledge receipt of this memorandum and return to the Office of the Deputy Commissioner.

99–33 Interdepartment Message

To: District Directors.
From: Henry Boyle, Deputy Commissioner.
Subject: Paternity—Mother Unwilling or Unable to Name the Father.

Please refer to our memo to the District Directors and Intake Unit Supervisors dated April 12, 1972 on the above subject.

We wish to reemphasize that policy as outlined in Manual Vol. 1, Index No. 3460.22 must be followed. "If the mother is unwilling or unable to name the father, she is still eligible for assistance to meet her own needs, the needs of the child in question and the needs of any other children in the family providing all other eligibility requirements are met; however, if she is unwilling to name the father she is subject to be cited to appear before any judge of the Circuit Court, be compelled to name the putative father and to institute an action to establish paternity of the child".

"In all situations assistance is granted promptly when all eligibility requirements are met, whether or not court action is pending to establish paternity or to secure support".

It is not a condition of eligibility that the mother name the putative father. When the worker notifies the mother she is subject to be cited to appear in Circuit Court and be compelled to name the putative father, the worker *is not to interpret this as a factor of eligibility.*

We are requesting that the workers again be advised that policy *must be followed.*

Please acknowledge receipt of this memorandum and return to the Office of the Deputy Commissioner.

100–1 United States District Court for the District of Connecticut

Civil Action No. 15,579

March 28, 1973

DONNA DOE, LINDA LOE, RENA ROE, SALLY SMITH, AND ALL OTHERS SIMILARLY SITUATED, PLAINTIFFS

v.

NICHOLAS NORTON, INDIVIDUALLY AND AS COMMISSIONER OF WELFARE OF THE STATE OF CONNECTICUT, DEFENDANTS

Civil Action No. 15,589

SHARON ROE AND DOROTHY POE, INDIVIDUALLY AND ON BEHALF OF OTHERS SIMILARLY SITUATED, PLAINTIFFS

v.

NICHOLAS NORTON, INDIVIDUALLY AND AS COMMISSIONER OF WELFARE OF THE STATE OF CONNECTICUT, DEFENDANTS

Deposition of John A. Nadolski

100–2 Appearances:

For the interests of the children: Rosen and Dolan; by: David N. Rosen, Esq., Edward J. Dolan, Esq., 265 Church Street, New Haven, Connecticut.

For the Plaintiffs: Raymond Kelly, Esq., 35 Village Street, Rockville, Connecticut.

For the defendants: Michael Anthony Arcari, Esq., 76 Meadow Street, East Hartford, Connecticut.

100–3 *John A. Nadolski*

witness called pursuant to agreement, being first duly sworn in the above cause, testified on his oath as follows:

By Mr. DOLAN:

Q. Mr. Nadolski, could you give us your full name and your address, please?

A. John Anthony Nadolski, 300 Century Hills, Rocky Hill.

Q. And by whom are you employed?

A. By the State of Connecticut, Welfare Department.

Q. And how long have you worked for the Welfare Department?

A. Two and a half years.

Q. In what capacity are you employed by the Welfare Department?

A. Investigator in the Resources Department.

Q. And how long have you been employed in the Resources Department?

A. Two and a half years.

100-4 Q. And in what office?

A. Norwich office.

Q. Now, does your job include securing or attempting to secure information regarding the paternity of illegitimate children of welfare recipients?

A. Yes, it does.

Q. And could you tell us, please, how the existence of such children would come to your attention?

A. It would come one of two ways: at the time of application, through an intake worker; or during an annual review of existing welfare mothers.

Mr. DOLAN. Off the record.

(Discussion off the record.)

Q. Could you tell us, please, with respect to each of these two instances, what the welfare worker, what her function is in terms of relaying this information on to you?

A. All right. Either at the time of the review or at the intake procedures, the welfare worker would ask the mother who the father of the child is. If at that time the applicant or the recipient refuses to name the father, the worker would inform the resource unit to have an investigator enter the case.

Q. Does the welfare worker have an obligation to refer every mother of every illegitimate child to the Resource Department when she will not in fact give the information required?

100-5 A. To the best of my knowledge, yes.

Q. And to the best of your knowledge, does the welfare worker have any discretion in this area?

A. I don't believe so.

Q. Let me cite two specific cases to you, please, and you can answer with respect to them. If a welfare worker at the time of the annual review were to visit the home of a recipient whom she has had an on-going relationship with, and the welfare recipient has had an illegitimate child and states to the worker that she does not in fact know who the father of the child is, and if the welfare worker believes this to be the case, what steps is the welfare worker required to take with respect to that child?

A. She is still required to inform us of it.

Q. And in another situation, if the welfare recipient were to tell the worker that there were very real physical concerns for both her and her child that prevented her from conveying this information, and if the worker felt this was in fact true, what would the worker's obligation be?

A. I would believe they would still have to inform us of it. I don't believe they have the right to make that decision themselves not to take it any further.

Q. Now, let me ask you, with respect to yourself, after these cases have gone through the welfare worker and are then handled by Resources. First, let us include those situa-

100-6 tions. Could you tell us what you do in a normal situation when a case is referred to you in which the mother has not in fact named the father of the child?

A. I would usually enter the interviewing booth and again ask the mother who the father of the child was. If at that time she again refused to name the father, I would inform her that under welfare laws, if she refuses to name the father of the child, we can turn it over to an attorney to cite her to appear before a judge of the Circuit Court; and if at that time she still refuses, she can be liable for a fine of up to $200.00 and a prison sentence up to one year. If she still refuses to name the father of the child, I would turn it over to an attorney.

Q. Now, during this discussion which you would have in a normal situation with the welfare recipient, if she were to tell you that she did not know who the father of the child was, how do you view your function in that situation?

A. It wouldn't change at all. I'd turn it over to an attorney to cite her.

Q. If you in fact believe that the woman does not know who the father of the child is, do you feel that it's within your power to refuse—or to decline to forward the matter to an attorney?

A. Not on my own. We would generally contact the Attorney General's office and tell him that we did think she was
100–7 telling the truth and get his opinion on it.

Q. Have you ever done that in a situation?

A. Not yet, not up to this point.

Q. What makes you feel that you even have the power to do that under the statute?

A. Attorney Higgins told us we could, to call in if we thought that she was telling the truth.

Q. And when did you become aware of the fact that you had this kind of discretion?

A. I think I handled six cases up to that point. He was down the office one time and we were talking about it.

Q. How long ago was this?

A. Over a month ago. I don't remember exactly when.

Q. But less than—let's say, less than three months ago?

A. Yes.

Q. And it was after the initiation of this suit that you first learned of the fact that you had this type of discretion?

A. Well, that I don't know because I'm not sure when the suit actually started. If it was, it was right at the time it was started.

Q. Well, the suit was filed on January 20th. Did this conversation, to the best of your knowledge, take place prior to January 20th or after January 20th, because that's two
100–8 months ago?

A. It would be right around that time. I couldn't swear one way or the other.

Q. Right. Now, let us say that when you are in discussing this kind of a situation with the welfare recipient, if she were to bring facts to your attention which would indicate that she feared for the physical safety of both her and her child, or either her or her child, and you felt from listening to the conversation that here fears were in fact well-founded, do you have or do you feel that you have any kind of discretion in that situation?

A. I imagine I'd do the same thing as what I would do if I believe she didn't know who the father was, and I'd contact the Attorney General's office.

Q. And you feel that you have discretion in this area?

A. I think so, yes.

Q. And let me ask you this: When did you first begin processing cases under this statute?

A. At the end of last year, around December, I believe, December or November.

Q. And as you viewed your function at that time, did you feel that you had any discretion at all?

A. I believe I would take it up with my supervisor. You know, if the same thing were true, I'd take it to my
100–9 supervisor and let him take it to somebody else.

Q. Well then, is it fair to say that you've never had a case where you felt that there was any real question——

A. No.

Q. —about the reason?

A. No.

Mr. DOLAN. Off the record for a minute.

(Discussion off the record.)

Mr. DOLAN. That's all.

By Mr. ROSEN:

Q. Do you know in any other offices of instances in which a mother who refused to give a name did not have her name referred to an attorney for——

A. Not to my knowledge.

Q. You know of no such instances?

A. No.

Q. When you talked to the mothers and informed them of their obligation—strike that. Is it part of your function to find out why a mother has refused to name the father of a child?

A. Yes, I believe so.

Q. You believe it is?

A. Right.

Q. And you discuss that in your interviews also?
100–10 A. Yes.

Q. And in any of your interviews, have you explained to the mother what the consequences for the child would be of her naming the father of the child?

A. At times I would tell here what benefits would come to the child as far as social security or any support we might be able to get from the father.

Q. You say, "at times." Is that something you do at times and not at other times?

A. Most of the times. If she would say flatly, she doesn't want to have anything to do with the father, which has happened on occasion, I probably wouldn't go into it.

Q. If the mother were to make a response like that, would you normally just terminate the interview?

A. I would tell her what the law is and I would terminate the interview.

Q. So is it fair to say that in instances where a mother appears to you initially to be firm or to be adamant about not naming the father, you would then just refer that case to the attorney after apprising her of her obligations?

A. Right.

Mr. ROSEN. Off the record.

(Discussion off the record.)

Mr. ROSEN. No further questions.

100–11 Mr. KELLY. I have a few questions.

CROSS-EXAMINATION

By Mr. KELLY.

Q. Have you ever been involved in any actions against mothers of illegitimate children who are not on welfare?

A. No.

Q. Does your position as a resource worker give you the authority to use the law 52–440b against non-welfare recipients?

A. I don't believe so. We don't have any contact with non-welfare recipients.

Q. You testified earlier that you explained some benefits that may accrue to a child to the mother.

A. Correct.

Q. How long have you been doing it?

A. How long have I been doing what?

Q. Explaining the benefits.

A. Since this action started.

Q. Since this lawsuit started?

A. No, since we've been citing the mothers.

Q. So back in—did you testify earlier that you started these——

A. In November or December.

Q. November or December of 1972?

100–12 A. Right.

Q. And from that time to the present——

A. Ever since we've been citing them, I've been telling them that.

Q. Is there a departmental regulation or memo that explains your task in this situation?

A. I don't believe so.

Q. This was then an oral directive that you got from your supervisor?

A. It might have been written. I don't remember if there was a written memo.

Q. And you also testified that you never decided not to turn a case to a private attorney?

A. Correct.

Q. How many cases have you processed?

A. About two dozen.

Mr. KELLY. I have no further questions.

CROSS-EXAMINATION

By Mr. ARCARI:

Q. Aside from turning the case over to a private attorney—it is a private attorney that you turn the case over to?

A. Correct.

Q. And this is, as far as you know, pursuant to law or

100–13 statute?

A. Correct.

Q. Now, aside from that action that you take, turning the matter over to a private attorney, do you take any action against the welfare recipient such as terminating her assistance or a recommendation to that effect?

A. No, sir.

Q. Any punitive action or penalty or anything like that?

A. No.

Q. And I believe you testified that once there is an indication that a welfare recipient mother—she's quite adamant that she doesn't want to disclose the name, I think you indicated you terminate the interview?

A. Yes.

Q. Now, do you hold just that one interview and then you refer the case over to a private attorney?

A. Yes.

Q. My point is, you don't keep asking her to come back over and over again?

A. No.

Q. I think you indicated that you referred twelve cases over to a private attorney.

A. Approximately two dozen.

Q. Two dozen, excuse me. Have you had any cases
100–14 where the recipient mother has voluntarily given you the name of the putative father involved?

A. About fifty percent of them have given it to the attorney. They've never come back to me directly to give it to me.

Q. That's the cases you referred to a private attorney?

A. Right.

Q. How about cases where you have an interview but, in other words, where the mother does disclose the name to you?

A. Oh, at the time of the interview?

Q. Yes.

A. Oh, yes.

Q. Do you have any idea—your best guess?

A. I would say my best guess would be about a dozen.

Q. About a dozen cases——

A. Where the mother has volunteered the name of the father.

Q. This is after you explained the benefits to the child?

A. Yes, either the benefits or the law that we're operating under.

Q. Out of those two dozen cases that you referred out for action, I think you indicated that fifty percent of the mothers have named the putative father involved?

A. Approximately, yes.

Q. Do you have any knowledge as to whether or not
100–15 any acknowledgements of paternity were executed?

A. Well, I think there is one that I'm working on that the father has also signed the paternity papers. The rest of them are in the process of either paternity actions——

Q. Or possibility of executing an acknowledgement of paternity?

A. Right.

Q. Now, does anyone else talk to the recipient mother during the time of this interview? Is this solely something you take care of?

A. You mean personally?

Q. Yes.

A. No, it would be any of the investigators in the office who would be called in.

Q. But once you've opened an interview with the recipient mother, somebody else doesn't come in and sit down?

A. No.

Q. This is a private and confidential——

A. Right. The social worker would be present and myself.

Q. Now, how does the welfare recipient mother get to your office?

A. At the time of application, you mean—physically or——

Q. No, I mean in reference to—in other words, let me ask you a question: Do you notify her to come in and see
100–16 you in reference to the child in question?

A. I can't really answer that because the original contact is made through the social worker.

Q. I see. That's something the social worker does?

A. Usually when we get involved, they're in the office for the interview.

Q. I see. I understand. Let me ask you this: You indicated more than once that when you explain the situation to the recipient mother why she should disclose the name, you indicated that you explain the benefits to the child.

A. Right.

Q. Other than explaining what the law is, do you—I'll withdraw the question. What you've given us today in reference to the interview with the recipient mother, is that your sole function in this type of a case?

A. Yes, I think so. I'm not sure what you mean.

Q. Can you let us generally what were some of the reasons why—I'll withdraw the question. Let me ask you this one question: You have no reason to conduct an interview or pursue anything in reference to Section 52–440b as to the mother that's not on welfare assistance——

A. No.

Q. —is that correct? Let me ask you this: Those two dozen cases that you've referred to a private attorney to take
100–17 further action under the law, do you know whether or not—I'll withdraw the question.

Mr. ARCARI. I think that covers it.

Mr. ROSEN. I have about two more questions.

REDIRECT EXAMINATION

By Mr. ROSEN:

Q. You are not a social case worker——

A. No.

Q. —is that right? And you have not had social case work training or experience?

A. No.

Q. Your involvement is strictly in the financial aspect of it?

A. I don't know if it's just financial but it's the resource aspect. We cover a lot more than just finances. We don't get involved in any social work or along that line, if that's what you mean.

Mr. ROSEN. OK.

Mr. KELLY. I have a few more questions.

RECROSS-EXAMINATION

By Mr. KELLY:

Q. Mr. Arcari asked you before exactly what your
100–18 function was as a resource worker—I think that was his question—and you replied that you handled these type of cases concerning naming the putative father. Wasn't that true?

A. Yes.

Q. Is your only function as a resource worker to determine the names of putative fathers?

A. No.

Q. You have other functions?

A. Yes.

Q. Okay. I have just one more question. If a woman came in to you and gave the name of the father but said she feared for her physical safety and the safety of her child and therefore wouldn't sign the acknowledgement——

A. Right.

Q. —what would you do with that case?

A. I'd refer it to my supervisor and to the Attorney General, see what action they want to take.

Q. You wouldn't refer it to a private attorney then?

A. Not before I contacted somebody else in the department.

Mr. KELLY. Okay.

Mr. ROSEN. That's all. Thank you.

(The deposition was adjourned at 1:50 PM.)

[CHILDREN'S EXHIBIT 4, CASE NO. 15,579, NO. 15,589 CIV., APRIL 30, 1973]

United States District Court for the District of Connecticut

101–1 United States District Court for the District of Connecticut

Civil Action No. 15,579

DONNA DOE, LINDA LOE, RENA ROE, SALLY SMITH, AND ALL OTHERS SIMILARLY SITUATED, PLAINTIFFS

v.

NICHOLAS NORTON, INDIVIDUALLY AND AS COMMISSIONER OF WELFARE OF THE STATE OF CONNECTICUT, DEFENDANTS

March 28, 1973

Civil Action No. 15,589

SHARON ROE AND DOROTHY POE, INDIVIDUALLY AND ON BEHALF OF OTHERS SIMILARLY SITUATED, PLAINTIFFS

v.

NICHOLAS NORTON, INDIVIDUALLY AND AS COMMISSIONER OF WELFARE OF THE STATE OF CONNECTICUT, DEFENDANTS

Deposition of Joseph Mancini

101–2 Appearances:

For the interests of the children: Rosen and Dolan; by: David N. Rosen, Esq., Edward J. Dolan, Esq., 265 Church Street, New Haven, Connecticut.

For the plaintiffs: Raymond Kelly, Esq., 35 Village Street, Rockville, Connecticut; Frank Cochran, Esq.

For the defendants: Michael Anthony Arcari, Esq., 76 Meadow Street, East Hartford, Connecticut.

101–3 *STIPULATIONS*

The reading and signing of the deposition are waived; and the balance of the Federal Rules apply. Objections to notice and proof of the authority of the Notary Public are waived.

Joseph Mancini witness called pursuant to agreement, being first duly sworn in the above cause, testified on his oath as follows:

DIRECT EXAMINATION

By Mr. DOLAN:

Q. Would you state your full name and address, please?

A. Joseph Mancini, 247 Townsend Avenue. That's in New Haven.

Q. By whom are you employed, Mr. Mancini?

A. State of Connecticut Welfare Department.

Q. How long have you been employed by the Welfare Department?

A. It will be five years in July.

Q. In what capacity do you work at the Welfare Department at the present time?

A. The classification is welfare investigator.

Q. And do you work in the resource unit?

101–4 A. Yes, I do.

Q. And how long have you worked in that capacity?

A. Over two years.

Q. And does your job involve securing or attempting to secure information regarding the paternity of illegitimate children of welfare recipients?

A. That's one of my jobs.

Q. Could you tell us, please, briefly, how the existence of such children would come to your attention?

A. Well, there's two different ways. If the person is coming on assistance, the first time she's applying for assistance, and there's a child who is of a union which isn't her husband's, or if she's not married and she's referred from the intake unit over to us, well, she tells who—acknowledges who the father is and signs a notarization—the only part I get involved in is notarizing it—and if she volunteers to go to Family Relations Court—it has to be voluntary.

Q. And what is the other situation whereby you would become involved?

A. The other situation would be if she's on welfare and has a child.

Q. And how would that case come to your attention?

A. When she calls up to have an additional member added onto her budget, we would be notified. And then we

101–5 would do the same thing again. We'd ask if she would sign an affidavit and we'd proceed that way. I say there's two ways: if she's already on assistance, and has a child in addition to her family, which her husband did not father, or if she's not married, which is an O.W. child.

Q. Now, is it the practice in New Haven that when one of these situations occurs, does the original person who is either taking the intake interview or who is the worker, begin any inquiries to determine whether or not the person is willing to name the father, or is all of that taken care of by the resource unit?

A. No. The initial question is asked by the intake unit. In filling out their form, on their form the question is there, "Who is the father of the child?" It's on the form.

Q. To the best of your knowledge, does the welfare worker who would be in contact with the recipient prior to your contact with the recipient, does that worker have any discretion to determine when to refer such cases to you? In other words, if the welfare worker already had an on-going relationship with the welfare recipient and the welfare recipient had a child, and if the welfare worker talked to her and she stated that she did not in fact know who the father of the child was, is the welfare worker empowered with the discretion to leave the matter right there or does that kind of a matter have to be referred

101–6 over to you?

A. It's not referred over at that time. In other words, it does not block her being accepted for assistance. The only time we get referred is after she's granted on a situation like that.

Q. No. But assuming she's on assistance, if that kind of a situation arises where the welfare worker believes that the mother does not in fact know who the father of the child is, what occurs in that situation vis-a-vis you?

A. She does not know or does not want to name? That's two different things.

Q. I'm saying if she tells the welfare worker she doesn't know who the father is.

A. The welfare worker would refer it over with his information.

Q. And what would happen in that situation as far as you're concerned? If you were to interview her then and ask her about

this, and you determined, after talking to her, that you believed then?

A. Well, if I actually believed the woman, if I had real reason to believe her, then it would possibly be left for a next review where it would be asked again. But if there's reason to doubt, we would follow it up.

Q. By "follow it up" what do you mean?

101–7 A. Well she'd be referred—one of our attorneys would contact her to ask her the same question.

Q. Let's take another example. Let's assume again with respect to the welfare worker who has an on-going relationship and has had an on-going relationship with the welfare recipient, let's assume that that worker in discussing the question of the illegitimate child with the mother learns from the mother that she will not provide the name of the father because she fears for her own physical well-being and fears for the physical well-being of the child because she's been threatened in fact by the putative father. If the welfare worker in that situation determines that the fears of the mother are in fact well-founded, does the welfare worker have any discretion in that kind of a situation?

A. Can I rephrase the question the way I understand you're saying it?

Q. Fine.

A. I understand you're saying if the welfare worker is told by the client that if she named the father, she'd be physically abused—is that what you're saying?

Mr. ROSEN. Just off the record for a minute.

(Following the discussion off the record, the answer was read.)

Q. Right.

A. She told the worker this?

101–8 Q. Right.

A. And you want to know what we'd do in a situation like this?

Q. I want to know, does the welfare worker in that situation have the discretion to end the matter right there?

A. No.

Q. What would happen in that situation?

A. She would send the information over to the research unit.

Q. And then if you were to then interview the person and she told you the same information and in effect you believed

what she was saying, do you feel that you have any discretion in that situation?

A. No. I still would have to follow it through.

Q. And what do you mean by "follow it through"?

A. If she would not name, if she refused to name the father, with the belief that I think she knows but she refused to name him, I would have to have her cited under the statute.

Q. Do you feel there's any set of circumstances whereby you have the discretion, after discussing the situation with the mother, to decline to forward this information to an attorney if she will not in fact name the father?

A. No, because—off the record.

(Following discussion off the record the question was

101-9 read.)

A. You're still talking about the abuse end of it now? You're still talking about if she refuses to name because she's in fear of the man's punishment?

Q. I'm saying, in any set of circumstances where the woman knows who the father is but tells you that because of some other reason—and I'm not saying what the reason would be—but if she said that there was some other reason why she could not tell you who the father of that child is, do you feel that you have the authority to, by yourself, to consider that reason legitimate and to terminate the matter there without referring it to an attorney?

A. No, for the simple reason that because of the situation we have in New Haven and the attorneys—I've worked with the attorneys in a number of paternities they've handled—that if a third person, which is not welfare, contacts the woman, the results in my opinion could still be the same, but the third person either confirms our opinion that this woman does not know or refuses to name, and why and what the reason is for it.

We've also found out that when a third person attorney gets involved, where she's not talking to a social worker and she's not talking to a resource worker and she's not hampered by being in an office where she's waited two hours, that sometimes the story is the same and sometimes it's different. And

101–10 the situation I have in New Haven, the attorneys that I have, that I work with, know this, and by dealing with the client and being a third person which is basically out of welfare, they've had different results or their opinion has been

the same as ours. And then we would decide then whether we should pursue or not pursue.

Q. Could you give us an example, let's say, of a set of circumstances other than where there's just a determination of whether or not the woman does know who the father is? Excluding that situation, could you give us an example of any other situation where, after all three of these parties have evaluated the circumstances, they have decided not to pursue such an action?

A. Yes. Of course, I can't give you names but we had a girl who had a child, an O.W. child, and she stated that she had relations with more than one person during the time she could be impregnated. In fact, she lives in a commune. Now, this information was at first received by the intake worker, forwarded over to the Research Department, and then forwarded to an attorney to contact her to ask her why she would not name the father. And the girl came back with the same information, and we did not pursue it farther than that because we believed that she did live in a commune and she had relations with more than one person and she could not name the father.

Q. But that was a situation where she could not in
101–11 fact name the father.

A. She could have given us six names.

Q. But she was incapable of naming the father because she could only narrow it down to five or six people. What I'm asking you, has there ever been a case in New Haven that you know of, or anywhere else that you know of, where the mother has refused to name the father for reasons other than the fact that she wasn't sure who the father is; in other words, where the mother said, "I will not name the father because I fear for my safety and I fear for the safety of my child"? If that situation were to occur, do you know of any situation where, after discussing the circumstances and feeling that her fears were well-grounded, that the department has declined to pursue the action?

A. In the number of cases I handled, which is pretty close to over 200, I've never come across one yet where the woman would not name for that reason.

Q. Well, other than the fact that they don't in fact know, or they claim they don't in fact know who the father actually is, what are other reasons that you've heard in terms of why mothers will not name the father of the child?

A. The reasons that the woman gives or has given to the Welfare Department—when I say "Welfare Department," I mean the intake worker and the resource worker—is basically,

"I don't want to name him," and we do not pursue it
101–12 much more than that. If she wants to volunteer the reason why she doesn't want to name him, we accept it. But we don't pursue it to the point and say, "Why don't you want to name him?" In order to get welfare, she doesn't have to name him. So we're mostly concerned—what we do in talking to her in the Welfare Department is try to get her to voluntarily name the person. We explain to her what benefits would come of this in the point where her child might have social security or whatever they might have from the putative father, but we do not pursue her reasons, what her reasons are why she won't name him, unless she volunteers it.

Q. But now we're in a situation where somebody can go to jail for this——

Mr. ARCARI. I'm going to object. May I go off the record for a second?

Mr. DOLAN. Yes.

(Discussion off the record.)

By Mr. ROSEN:

Q. Do you know of any situations in which you and the attorney felt that a woman knew who the father of the child was, but you decided not to require her to name the father?

A. There's been a few cases where the child has been born out of the state and we knew that even if we received the father's name, it would be almost impossible to go any further because the father would be out of the area.

101–13 Q. That's the only situation you've come across in your experience?

A. Right.

Q. And about how many cases does that encompass?

A. Are you referring to paternities? Or are you referring to citing?

Q. Well, both.

A. I couldn't give you—the exact amount that we don't follow through because of failure to name?

Q. Yes.

A. Very few. I couldn't give you a number.

Q. And how many paternity cases are you talking about—your general experience?

A. I get approximately anywhere from 150 to 200 referrals on O.W.'s a month. Some of these are updated previous, but I handle about 200 a month referrals on paternity actions, that they're named, failed to name, and what have you.

Q. And the only ones you do not pursue, including citing the mother as part of the pursuit, would be those in which the father is out of state and immune from process?

A. Now, you say "pursue." Now, we're going back. I still use the three: The initial intake—I take the evaluation of the person who took the intake; my evaluation if I see the client—now, I don't always see these clients because
101–14 there are other resource workers—and then the evaluation of the attorney. And if the woman is telling the truth, we all arrive at the same evaluation.

Q. So every one is referred to the attorney?

A. Every one where the child is within the statute of limitations, I refer them.

Q. And the only cases you know of where the attorney, in consultation with your office, has not pursued the matter further, are cases where the father would be immune from process?

A. That, and where he feels that a woman cannot—we feel the woman cannot name the person, or if she can name the person and the whereabouts are unknown.

Q. Those are the only situations?

A. The only three.

Mr. DOLAN. Off the record.

(Discussion off the record.)

Mr. ROSEN. I'm through.

Mr. DOLAN. I'm through too.

CROSS-EXAMINATION

By Mr. ARCARI:

Q. Is it one of your duties to get involved in the collection of support of minor children born out of wedlock?

A. No, other than the necessary referrals, if I had a
101–15 place to refer it to. If the woman agrees to go down to Family Relations Court, because we know that the only time a woman is required to go to Family Relations Court is if the father is adjudicated or acknowledged——

Q. Let me back up for a second just to get this on the record. You take no punitive action against the welfare mother if she

elects not to disclose the name of the putative father; that is, you don't cut her off from assistance or penalize her or anything like that?

A. No.

Q. Once she indicates that she desires not to disclose the name to you, you end your interview, I take it?

A. Our resource interview or the intake interview?

Q. Well, your interview, the one you're having with the mother to secure the information.

A. If she refuses to name?

Q. Yes.

A. Then I explain to her the benefits that she would have, but of course she's never told she has to name him. But then I tell her what we're going to do after that so she's aware. I say, "I wouldn't want you to leave here and all of a sudden you're surprised at what we're going to do." I explain what we're going to do in each step.

Q. All right. Let me clear up another aspect of this.
101–16 You've indicated that you refer the matter to attorneys. That appeared several times, that you refer the matter for the attorney to take some action. Now, this is action pursuant to what—52–440b, the statute involved where they can cite the mother before the Circuit Court? Is that your understanding?

A. Yes. I ask the attorney to proceed with the citing in.

Q. And then it becomes a question for the law to settle from that point?

A. Yes.

Mr. DOLAN. Off the record.

(Discussion off the record.)

Q. I think you indicated before that when welfare recipients come in to talk with you about the possibility of finding out who the putative father of a child in question is, this is all done on a voluntary basis. Of the cases you handle, do you have any idea what percentage of mothers voluntarily give you the names of the putative fathers?

A. The percentage?

Q. Yes.

A. Give them to me?

Q. Yes, your best guess.

A. To me?

Q. Yes.

A. About ten percent.

101–17 Q. Ten percent?

A. To me.

Q. All right, let me clarify it then. When you say to you, are you implying they may give it to someone else in the Welfare Department?

A. Well, if they don't give it to the intake worker, by the time they come to me, they don't give it to me. The intake worker already asked, so I really don't get that big of a reaction because I'm the second person and it's already been explained to her that she doesn't have to name him.

Q. Now, going back to the intake worker, do you have knowledge what percentage of the women coming in under those circumstances would disclose the name voluntarily to the intake worker?

A. About seventy percent.

Q. Do the women who disclose the names of the putative father voluntarily, do they ever voluntarily give you any reason why they're making that disclosure? I don't want to know any particular case but——.

A. Where they've supplied the name?

Q. When they've given you the name of the putative father, have they voluntarily given you any reasons why they're giving this information to you, why they elected to voluntarily disclose this?

101–18 A. Most of the names we receive, where the woman gives us the name of the father, she usually follows it up with, "Whereabouts unknown." She doesn't know where he is.

Q. Aside from that, did you find any particular reason why, or reasons, why a woman voluntarily wants to give the name——

Mr. Arcari. Let me go off the record for a minute.

(Discussion off the record.)

Q. Do you understand my question now?

A. Yes. The main reason they help us with the name is because they know the man should have an obligation. The obligation sometimes isn't always for support. It's the obligation to them. In other words, the mother feels that the man who is the father of the child owes an obligation to her, that he should stay around and marry her or he should be there with her, not

just leave her with a baby. The state is not always her primary—she really doesn't care much about the state.

Q. But that obligation—did you ever form an impression that that obligation excluded the child?

A. Yes, it does. It is more her own discretion—more concerned about herself than the child. Off the record.

(Discussion off the record.)

Q. In reference to those women who, after they've r[illegible] to disclose the name of the putative father to you, and then upon you explaining to them that they're subject to

101–19 the law and they could be cited in to appear before the Circuit Court for the court to question, do you have any knowledge, your best estimate, as to what number of mothers, under those circumstances, will disclose the name once this becomes known or once they're brought in to court?

A. About 90 percent of the mothers that the attorney has contacted to tell her that she would have to appear before a judge and tell the judge who the father is or why she would not name the father.

Q. You're saying that 90 percent of the mothers under those circumstances disclose the name of the putative father?

A. To the attorney without going in front of the judge. I haven't had one yet that went in front of a judge yet.

Q. In other words, after becoming aware of the law which is explained to them, they voluntarily disclosed it to you?

A. They volunteered the name, or they proved to the other attorney and our third person that they really don't know who the father is. If they know, they name it by that time.

Q. You made mention of the fact that in trying to find out who the putative father is, you explain some benefits to the mother involved. That percentage that do disclose the names—I'll withdraw that question. Let me ask you this: Generally, what percentage of mothers, your best estimate, will disclose the name of the father, the putative father of the child

101–20 in question, after you explain the benefits to the child?

A. Very few. As I said to you before, I don't have any——

Q. You're talking about in reference to the ten percent that do disclose?

A. Right.

Q. You're not talking about the 70 percent with the intake——

A. In the interview, the initial interview.

Q. Okay, that clarifies it.

Mr. ARCARI. I have no further questions.

Mr. COCHRAN. I have a few questions.

CROSS-EXAMINATION

By Mr. COCHRAN:

Q. When you've had an interview with someone who has been referred to you by the social worker, by the intake, and have made a decision either to refer it to an attorney or not, who within the Welfare Department would review your decision, if anybody?

Mr. ROSEN. He said he referred them all.

Mr. COCHRAN. Well, he said he referred them all with some exceptions, which he enumerated three.

A. I said I referred them all unless—I referred them all except probably—I refer them all.

Q. You refer them all. All right. Now, do you per-
101–21 sonally contact every mother in this circumstance who has refused to tell the intake worker or the social worker?

A. No.

Q. Are there other people with the same position you have who would do that?

A. No, because sometimes the intake worker or the review worker—the worker who is not associated with resource doesn't refer them until—when they come in, they should get ahold of resource. They don't. So the interviewer is not present at all times.

Q. So would there be cases which would be referred to a local attorney for citation under Section 52–440b without going through you?

A. There again, I have to explain, because the association I have with attorneys in New Haven, they just don't start citing them unless they contact the client. They wouldn't cite a mother into court without first contacting her.

Q. Okay. What I want to know is whether any cases in New Haven would be referred to those attorneys without going through you.

A. Without me personally interviewing the client, yes.

Q. Right.

A. But they all have to go through me inasmuch as I have to get the referral over. The attorney doesn't get it
101–22 directly from anybody else but me. But not in all circumstances have I had the opportunity to interview the client.

Q. What instructions would you normally give an attorney, when you're referring such a case to him, as to how to proceed?

A. The name of the client of course, the address, phone number if we still have it, the name of the child and any other—that's basically it, unless we had some information from some other source as to who the father may be.

Q. You would give him that information?

A. Right.

Q. Would you give him any instructions as to under what circumstances to confer with you on whether the action should proceed or whether it should be dropped?

A. The only instructions we have, that over the years we've worked out or we have, is they will contact the client before they proceed.

Q. Now, if there were an instance in which a welfare recipient were threatened with being discontinued from A.F.D.C. by a worker—were threatened with either being discontinued or not being put on A.F.D.C. by an intake worker or a social worker, would that come to your attention usually?

A. I know, and I can state for a fact, there's no intake worker that ever would make a statement like that in New Haven. These people are specially trained.

101–23 Q. So you know of no instance in which that's happened is what you're saying, is that correct?

A. I know, and I would say there's no instance where it would happen.

Q. Okay. Now, have there been any cases that you know of in which citations have been served and the women have appeared in court and been put on the stand, and either disclosed at that point or refused to disclose at that point?

A. None of the cases I know of have yet gone as far as the woman being put on the stand. I had one go as far as she talked to the attorney in the judge's chambers, but never where she has gone as far as the stand.

Q. About how many citations have been filed in the Sixth Circuit Court in New Haven, do you know?

A. There's only been six that I know of that have gone that far.

Q. As far as being filed in court?

A. As far as going to court.

Q. Has anyone ever told you, any recipient who had refused to disclose the name, ever told you that the reason she didn't want to disclose the name of the father was that she was afraid the father might inflict any physical harm on the child?

A. No.

Q. I think you testified before that none had ever said
101–24 that as to harm to herself, is that correct?

A. No. I stated before that I never had a client yet that I talked to that told me the reason she was not naming him was because of that reason. I stated before that most clients give me the name of the father because they're more concerned about themselves than the child.

Q. When you say that, do you mean they're more concerned with the money they can get from the father for the child support or other benefits they could get?

A. No, more concerned because they are left alone with the burden, and the man—they thought the man loved them and he left them, or he is not living up to what she expected him to live up to. But they're not really concerned about what the state's expenses are for support. This is not their main reason why they named the father. What the state has to pay, they're not concerned.

Q. Do you recall any mother in this circumstance telling you that she didn't want to name the father because she thought there would be psychological or emotional damage to the child as a result of her naming the father?

A. Never.

Mr. COCHRAN. I don't think I have anything further.

Mr. KELLY. I may have one question.

Mr. COCHRAN. I do have one other.

101–25 Mr. KELLY. You go first.

Mr. COCHRAN. I'm sorry.

By Mr. COCHRAN (continued):

Q. About what percentage would you say don't give any reason, of the ones you talked to, don't give any reason for not wanting to name the father?

A. Most of them. If you want to figure it, ninety percent.

Q. A very high percentage?

A. Very high because they say they don't want to name them.

Mr. DOLAN. I'd like to ask a related question, please.

REDIRECT EXAMINATION

By Mr. DOLAN:

Q. Could you just tell us briefly what takes place in a normal situation when you're discussing this kind of an issue with the client, and just explain to us briefly as if we were in one of the cubicles at the Welfare Department how you would go through this procedure?

A. Okay. A woman comes in and applies for assistance—okay?—and when I get to the part of who is the father of the child, she states that she doesn't want to name him—excuse me, you want me to go on, on this basis?

101–26 Q. Yes.

A. Then the intake worker would call one of the resource workers in to discuss it. Then we would say, "The reason we're discussing this is because we would like to know the father of the child, but this does not affect your eligibility for A.D.C. The worker here, Mrs. Jones, is your A.D.C. intake worker and she's going to proceed with your application no matter how our conversation comes out," okay?

Then I would state to her that the reason we would like to have the father's name is because it would be beneficial for her child inasmuch as if the person—well, as the adjudicated father or the acknowledged father, the child has rights to the father's estate, be it social security or whatever it might be afterwards, and that also if we could get the adjudication or the acknowledgement of the father, we could ask the gentleman for support, because we feel that he's responsible for support of this child. He fathered the child, we'd like him to support it. But, again, if we adjudicated the father and he acknowledged that he could not pay support, "it does not affect your welfare. The only time would be if he supported a sufficient amount where you would be over welfare standards and the money would go directly to you." But it would not affect her welfare grant on what he would support.

101–27 We do not try to convey to them that if the guy only gives $5.00 a week, she's going to be off welfare.

We convey to her that she's allowed to have so much money from the state for how many children she has, and the only reason we want this gentleman for is to help pay the expenses, or all if it's ever possible.

But through our general experience, the men involved, once they are either acknowledged or adjudicated the father, they usually don't pay enough support to take the person off welfare. We convey that. We don't want them to be afraid that we're going to take them and leave them high and dry. We're not going to hurt their A.D.C. grant, we're not going to affect their assistance.

And then I pursue and ask the question, "Who is the father of the child?" and they say, "Well, I don't want to tell you." I say, "Okay, you don't have to tell me, but I want to explain to you that the Welfare Department feels that we should go a little bit further to obtain the name of this father, and if you feel that you don't want to name the father, we'll refer it to an attorney to proceed with asking you to come to court"—I don't use the word "cite" because they don't understand—"we'll ask you to come to court and you explain to a judge why you don't want to name the father."

And we'll do this: "Now, if you don't want to, you
101-28 don't have to, but I want to explain to you if you do get a phone call or you get contact or you get a letter from one of our attorneys, you'll understand that the Welfare Department is proceeding. If you get a letter from an attorney"—.

Q. Do you explain at that point that there are penalties involved if she's called to court, and that she faces the possibility of going to jail for her failure to make this kind of a disclosure, or do you feel that that is the function of the attorney?

A. It's not the function of me because I really don't know if she's going to get penalized.

Q. No, but I mean, do you inform her that there is in fact a penalty?

A. I probably will say it like this: "The judge is going to ask you to name the father, and if you refuse he can make you name the father or bring"—see, I don't really know if they're going to find him. I don't want to scare the woman where she's going to give me the name. I don't think I have the right to do that.

Q. So you don't inform them that there is a possible penalty?

A. No.

Q. Okay.

A. Because what happens in the welfare office—I still feel sorry that they're embarrassed coming in to apply for
101-29 welfare. I don't want to embarrass them any more than explain to them what we're going to do.

Mr. DOLAN. That's all.

CROSS-EXAMINATION

By Mr. KELLY:

Q. If a woman gives you the name of the putative father but does not want to sign the acknowledgement form, what will you do with a case like that?

A. If she gives me the name of the father but will not sign the acknowledgement form, and we basically believe that is the putative father, then we assign it to an attorney and he'll bring an action to the Commissioner of Welfare, and he'll go ahead and see if he can find the man.

Excuse me, I would also explain what we're going to do. I hope you realize that I—every time I do one of these things I sit there and talk to the woman and explain—I ask them immediately, "You understand what's going to happen?" because I don't want them to come back later on and say—because this is a typical example of every day welfare people—"Nobody ever told me." This is off the record.

(Discussion off the record.)

Q. Mr. Mancini, would the women who named the
101-30 father be compelled to appear in court at the time of the paternity proceeding?

A. Yes, she'd be subpoenaed.

Q. And she would be——

A. She would be treated as a hostile witness.

Q. And she'd be forced to acknowledge on the stand that she was the mother of an illegitimate child, in public?

A. She'd be treated as a hostile witness. She'd be asked these questions and be treated as a hostile witness.

Q. But she'd be asked——

A. She'd be asked if she's the mother of the child.

Q. Of the illegitimate child?

A. Of the child in question, yes.

Mr. KELLY. That's all I have.

REDIRECT EXAMINATION

By Mr. ROSEN.

Q. Can you explain what this document is?

Mr. ARCARI. I'd like to object because that form you have is a fee form for attorneys initiating paternity actions. I don't see what that has to do with his aspect of it. The witness has already indicated this is the fee schedule, and it's not relevant. Off the record.

(Discussion off the record.)

101–31 Mr. ROSEN. We'll put it in and you put your objections on the record, and they're preserved if you put them on the record.

Q. Mr. Mancini, would you give me the document that you have?

A. (Witness handed document to Mr. Rosen.)

Mr. ROSEN. Would you mark this as——

Mr. ARCARI. Would you identify it first?

Mr. ROSEN. I'll just have it marked for identification.

(The document referred to was received and marked Children's Exhibit 1 for Identification.)

Q. Mr. Mancini, would you examine this Exhibit 1 for Identification and explain what this piece of paper is? (Document handed to witness.)

A. This piece of paper is a state form, W–870, edition 11/72.

Q. And what is the purpose of that form?

A. The purpose is to explain to the attorney that if he's assigned an action and he proceeds with it, what his fee schedule may be.

Mr. ROSEN. We'll offer that as our Exhibit 1.

Mr. ACARI. May I object to the offer as being not relevant to these proceedings? And I would also like to ask a

101–32 question of the witness in reference to that document so we may clarify the situation.

In reference to Exhibit 1, Mr. Mancini, that fee schedule, is that used as a fee schedule to pay attorneys for citing a welfare recipient mother to disclose the name of the putative father in Circuit Court?

The WITNESS. I've never used it.

Mr. ARCARI. But is that the fee schedule for that?

The WITNESS. This is the fee schedule that they could put in a bill for services, and then it's up to the discretion of Hartford if they want to pay that fee schedule.

Mr. ARCARI. But this is what—in reference to paternity actions, or is it reference to citing a mother before the Circuit Court to disclose——

The WITNESS. Citing a mother

Mr. ARCARI. This form is? This is the fee schedule?

The WITNESS. Yes.

Mr. ARCARI. Let me make sure I understand now. If a mother is cited in before the Circuit Court to disclose the name of the putative father, you use this form, the fee schedule form that we're talking about now, Exhibit 1, to pay the attorney? In other words, he's allowed to charge his fees in accordance with that schedule for citing in the mother?

101–33 A. It depends on what step he's in. Yes, this is generally what the state puts a limitation on what he can charge.

Mr. ARCARI. If he cites in a mother?

The WITNESS. If he cites in a mother, right.

Mr. ARCARI. That's if he cites in a mother who refuses to disclose the name of the putative father?

The WITNESS. Right, refuses the name.

Mr. ARCARI. Then I see no reason why I should object, and I'll withdraw the objection. I was under a different impression.

(The document referred to, previously marked Childrens' Exhibit 1 for Identification, was received in evidence and marked Children's Exhibit 1.)

Q. (By Mr. Rosen) What is your role with regard to paying the attorneys who do this work for the department?

A. The attorneys, they bill through our D.O., and then I just refer it up to Hartford——

Q. Do you have any——

A. —with the necessary papers. In other words, they can't put in for adjudication unless they have a copy of the judgment. I make sure everything is in order before I send it up. I send everything I'm supposed to send. I sort of get the packet together and mail it up.

101–34 Q. Do you have anything to do with determining the amount of payment?

A. No.

Mr. ROSEN. That's all.

By Mr. DOLAN:

Q. Are these paid on a straight contingency? In effect, if a person works on a case and does not reach a successful determination, does he still get paid?

A. In most cases they don't get paid unless they actually can prove that they—see, this goes again with the attorneys that I have that I work with. If it's a seven or eight dollar sheriff's fee, they don't even charge the state because it doesn't pay. They've been doing it for years and they don't burden the state with a small thing like that.

Q. What I'm getting at is: Do the attorneys get paid for these, if they do not come to a successful determination?

A. No.

Q. So that it is very much in the financial interest of the attorneys in question to pursue these matters because if they don't successfully pursue them, they don't get paid?

A. They could go out and spend money and continue to pursue them but they prefer to have all the information. If they're going to cite a woman in and they talk to her and, in other words, if the whereabouts are unknown and like that,
101–35 they know it's foolish to pursue it and they won't.

Q. But my question is: Do they get paid anything for that kind of a service?

A. No. I tell them, "Don't burden the state with paying anything."

By Mr. ROSEN:

Q. Which case is the penny ante case?

A. In other words, they know, or know enough, that they don't just start sending papers all over the place and say later on, "Well, I served this and I served this," and they served the wrong person and they want to get paid for it. No. They should know before they go forward that they have sufficient information or sufficient papers to go forward or they won't qualify.

Mr. ROSEN. Okay.

RECROSS-EXAMINATION

By Mr. ARCARI:

Q. I want to ask a few questions in reference to: Do you have any cases where—let me withdraw the question. Do you know of any cases where the welfare mother recipient refuses

to disclose the name of the putative father of the child in question where there is an attorney appointed in the Superior Court to represent the minor child in a divorce action, a
101–36 pending divorce action?

A. No. Most of—you're referring to a guardian ad litem?

Q. Yes, all right.

A. They're very cooperative with attorneys in guardian ad litems.

Q. I don't think I understand you correctly. I'm saying, do you have any case where the guardian ad litem has been appointed in a Superior Court to represent a minor child where a child was born out of wedlock and there is a pending divorce action? Have any of those cases come into your hands where it's been referred out to an attorney or back to the guardian ad litem to cite the mother before the Circuit Court?

A. I haven't had any yet, no.

Mr. KELLY. Are you finished?

Mr. ARCARI. Yes.

RECROSS-EXAMINATION

By Mr. KELLY:

Q. Have you ever sent out a case involving a woman who bore a child outside of marriage where the woman was not on welfare?

A. I?

Q. Yes, you.

A. No, only welfare cases.

101–37 Q. The only cases that you use 52–440b for are welfare recipients?

Q. The only cases that you use 52–440b for are welfare recipients?

A. The only cases I refer for an attorney to use the 52–440b is only welfare cases. That's all I have contact with.

Q. So you only deal with welfare recipients?

A. That's all.

Mr. KELLY. All right.
Mr. ROSEN. Okay. Thank you.
Mr. KELLY. That's it.
(The deposition was adjourned at 4:35 PM.)

101–38

STATE OF CONNECTICUT,
STATE WELFARE DEPARTMENT,
New Haven, Conn.

DEAR — You have agreed to cite the above-named person to appear before a Judge of the Circuit Court according to the terms of Section 52–440b of the Connecticut General Statutes, for disclosure of the name of the putative father of her child, and her agreement to institute paternity action.

The following represents our established payment for your professional services. In addition, we will reimburse you for sheriff's fees for simple service, and actual court costs paid by you, if itemized according to Section 52–261 of the General Statutes and submitted on your billhead with the following certification:

"I certify that I have paid the above items and have receipts for same."

$75—if the mother names the father prior to a court hearing.
$150—if the matter goes to a full hearing before the court.

The same fee prevails regardless of the number of children and/or fathers involved, provided the action involves one respondent.

If the mother names the father but refuses to initiate paternity proceedings, you will be asked to initiate an action on behalf of the Welfare Department under the terms of 52–440a of the General Statutes, for which a further fee schedule has been established.

Please contact the undersigned for any further information you require, and advise of your progress in the matter.

Sincerely,

———— ————,
Division of Resources.

102–1

[Children's Exhibit 5]

United States District Court for the District of Connecticut

Civil Action No. 15,579

DONNA DOE, LINDA LOE, RENA ROE, SALLY SMITH, AND ALL OTHERS SIMILARLY SITUATED, PLAINTIFFS

Vs.

NICHOLAS NORTON, INDIVIDUALLY AND AS COMMISSIONER OF WELFARE OF THE STATE OF CONNECTICUT, DEFENDANTS

Civil Action No. 15,589

SHARON ROE AND DOROTHY POE, INDIVIDUALLY AND ON BEHALF OF OTHERS SIMILARLY SITUATED, PLAINTIFFS

Vs.

NICHOLAS NORTON, INDIVIDUALLY AND AS COMMISSIONER OF WELFARE OF THE STATE OF CONNECTICUT, DEFENDANTS

Affidavit of Edward Zigler

Edward Zigler, being first duly sworn, deposes and says:

1. I am a psychologist specializing in the general area of child psychology. I received my B.A. degree at the University of Missouri at Kansas City in 1954 and my Ph.D. from the University of Texas at Austin in 1958.

102–2 I have taught at the University of Missouri and Yale University and am presently Professor of Psychology and Director of the Child Development Program, Department of Psychology, Yale University. I am also Head of the Psychology Section at the Yale Child Study Center and Chairman Designate of the Department of Psychology at Yale.

In 1970 I was appointed by the President as Head of the Office of Child Development and Chief of the Children's Bu-

reau at the Department of Health, Education, and Welfare. I served in these positions until 1972, and I am now a consultant to the Office of Child Development. In addition, I am a member of the Governing Council, Society for Research in Child Development and of the Policy and Planning Board of the American Psychological Association. I am also a present or past member of numerous other professional organizations, panels, and boards in the field of child psychology and psychiatry.

My areas of special interest within the field of child psychology include motivational determinants of children's performance; cognitive development and mental retardation, developmental theory of pschopathology, socio-economic deprivation, and genetic-environmental determinants of children's performance. I have written approximately one hundred fifty research, theoretical and critical books, articles and reviews in these areas.

2. I am familiar with the provisions of Section 52–440b of the Connecticut General Statutes, which require the
102–3 mothers of illegitimate children on welfare and certain other mothers of illegitimate children to name the putative father of those children and prosecute a paternity action against the putative father upon pain of fine or imprisonment.

3. It is my professional opinion, based on my clinical experience and my knowledge of the literature and research in the field of child development, that disclosure—and particularly compelled disclosure—of the identity of a child's father to that child will in many cases be extremely destructive to the child's emotional well-being.

4. A child whose father is absent from the home is in a precarious position psychologically. Boys in particular often have great difficulty learning what it means to be a man. Some boys as a result of father absence become "over-feminized" while others do not learn to control their aggressions and associate extreme aggressive behavior with masculinity.

5. A child whose father is absent frequently copes with the absence of his father by forming an idealized image of his father.

A child will frequently come to believe that his absent father is a very special and wonderful person. The child thus imagines a father who is larger than life to help overcome his sense of loss at not having a father present in his home. Part of this idealization of the father often includes a belief that the father wants to come live with the family and the child but for some reason is unable to.

102–4 6. This creation of an idealized image of a father is frequently the most successful adjustment possible for a child whose father is absent from the home. Imagining an ideal father may enhance a child's self-esteem and therefore minimize the destructiveness of having an absent parent. The child may also identify himself with his idealized absent parent and by modeling himself after that ideal father come to develop the virtues he has imagined in his father.

7. Where the child learns the identity of an absent father, these processes of psychological adjustment may no longer be available. When a child learns who his father is, he has to cope with the knowledge that his father is not ideal, but may be ordinary or someone the child is ashamed to have for a father. In such a situation the child's self-image will be severely damaged because the child instead of modeling himself after an ideal image rather may model himself after, imitate, and eventually become like his image of his real father. This image is likely to be bad, to coincide with society's image of men who are unwilling to support their families and desert their children, and will in any event not be the ideal that the child can create of the truly unknown father.

8. The child's self-image will also be severely damaged when he knows who his father is where this knowledge brings home the fact of the father's failure to live in the home. A young child will assume that his father is absent because the
102–5 child is unworthy in some way or because his father hates him. In other words the child will feel guilty and inadequate because he will assume that it is his fault that his father is absent.

9. In situations where a mother's being compelled to testify against a father has exacerbated strains between parents—as it may be expected to do in many situations—the child's self-blame may be reinforced by statements or cues from his parents that he is in fact the cause of tension between them, and his feelings of guilt will be increased.

10. Where the mother's being compelled to testify against a father has created tension and anxiety for the mother, this tension and anxiety will be especially destructive for a child who is already suffering from the handicap of an absent parent, and where mothers blame their children for creating strain between parents this harm will be compounded because the anxiety felt by the mother, which will rub off on the child in any event, may find its expression as anger and resentment at the child for being the source of the mother's embarrassment and the imposition of legal obligations on the father.

11. Intruding into the mother-child relationship by compelling disclosure of the father's name also undermines what is left of the happiness in that relationship by making
102–6 the mother feel even less confident and secure as a mother. Particularly in strained situations such as father absent homes, it is important to a child for his mother to feel free and confident in her relationship with the child. State compulsion and intrusion into one aspect of that relationship—the information the mother imparts about the father—may be expected to leave a mother less sure of herself as a mother. She will feel less in control of her relationship with her child; and as a result the child will feel less secure and sure of himself and who he is. Because the State is making an important decision about family life the mother, and hence the child, will also to some extent shift responsibility for parenting from the mother to the State, an effect which increases a sense of dependency on the state in both mother and child.

Signed.....
Edward Zigler

STATE OF CONNECTICUT
County of New Haven ss: April 30, 1973

Personally appeared before me Edward Zigler, Ph. D., and made oath to the truth of the foregoing affidavit.

DAVID ROSEN,
Commissioner of Superior Court.

103 United States District Court for the District of Connecticut

Civil No. 15,579

DONNA DOE, LINDA LOE, RENA ROE, SALLY SMITH AND ALL OTHERS SIMILARLY SITUATED

v.

NICHOLAS NORTON, INDIVIDUALLY AND AS COMMISSIONER OF WELFARE OF THE STATE OF CONNECTICUT

Civil No. 15,589

SHARON ROE AND DOROTHY POE, INDIVIDUALLY AND ON BEHALF OF OTHERS SIMILARLY SITUATED

v.

NICHOLAS NORTON, INDIVIDUALLY AND AS COMMISSIONER OF WELFARE OF THE STATE OF CONNECTICUT

Before: TIMBERS, *Circuit Judge*, BLUMENFELD and NEWMAN, *District Judges.*

Memorandum of Decision, Findings of Fact and Conclusions of Law

BLUMENFELD, *District Judge:*

By this action, the plaintiffs[1] challenge the constitutionality of Public Act 439 § 4 (1971), Conn. Gen. Stats.
104 § 52–440b.[2] The challenged statute is part of a comprehensive legislative scheme whereby the mother of any illegitimate child is legally obligated to discuose the name of her

[1] Because of the special circumstances of this case, plaintiffs sue under fictitious names. They are all unwed mothers of children who sue on their own behalf as well as on behalf of their minor children.

[2] Conn. Gen. Stats. § 52–440b provides:

"(a) If the mother of any child born out of wedlock, or the mother of any child born to any married woman during marriage which child shall be found not to be issue of the marriage terminated by a divorce decree or by decree of any court of competent jurisdiction, fails or refuses to disclose the name of the putative father of such child under oath to the welfare commissioner, if such child is a recipient of public assistance, or to a selectman of a town in which such child resides, if such child is a recipient of general assistance, or otherwise to a guardian or a guardian ad litem of such child, such mother may be cited to appear before any judge of the circuit

child's biological father and to prosecute a paternity action against the named putative father.[3] The plaintiffs rely
105 upon the Civil Rights Act, 42 U.S.C. § 1983, for a cause of action and upon 28 U.S.C. § 1343(3) for this court's jurisdiction. In addition to injunctive and declaratory relief, 28 U.S.C. §§ 2201 et seq., they seek to maintain their suit as a class action. Fed. R. Civ. P. 23.

Because they sought to enjoin the operation of a state statute, this three-judge district court was convened. 28 U.S.C. §§ 2281, 2284.[4]

I

The Parties

The plaintiffs in this suit are all unwed mothers of illegitimate children, allegedly eligible to receive welfare benefits under the Aid to Families with Dependent Children (AFDC) program of the Social Security Act of 1935, Sections 401 et seq., 42 U.S.C. §§ 601 et seq. (hereinafter the Act). They seek to represent the class of individuals similarly situated as well as their children.

The defendant is the Commissioner of Welfare, Nicholas Norton, sued in his individual and representative capacity and charged with the responsibility of implementing the
106 provisions of this statute with regard to individuals presently receiving welfare benefits.

---

court and compelled to disclose the name of the putative father under oath and to institute an action to establish the paternity of said child.

"(b) Any woman who, having been cited to appear before a judge of the circuit court pursuant to subsection (a), fails to appear or fails to disclose or fails to prosecute a paternity action may be found to be in contempt of said court and may be fined not more than two hundred dollars or imprisoned not more than one year or both."

[3] Failure to comply with this duty may result in the mother being held in contempt of court, and fined not more than $200 and/or imprisoned for not more than one year. Conn. Gen. Stats. § 52-442(a) as amended by Public Act 439 § 3(b) (1971) provides for a judgment "for support of the child by payment of a weekly sum until the child attains the age of eighteen years, together with reimbursement for the lying-expense, accrued maintenance * * *."

[4] The decision granting the plaintiffs' motion to convene a three-judge district court and denying the plaintiffs' motion for preliminary injunctive relief is reported at 356 F. Supp. 202 (D. Conn. 1973). Issues adequately discussed in that decision will not be restated here and familiarity with that opinion is assumed.

II

Class Action

The plaintiff mothers who instituted this action in their own behalf and in behalf of their children moved for certification of this case as a class action under Fed. R. Civ. P. 23(a) and (b)(2). Of course, the plaintiff mothers, as guardians of their respective children, may sue on their behalf. Thus, the children are not only proper, but necessary parties. However, some of the interests which the mothers urge relating to the subject matter of this action are neither typical of nor congruent with the interests of their children, but actually conflict with them in several respects. In light of this conflict of interests between the mothers and their children, the court, on its own motion, appointed counsel to represent the interests of the children.

It is clear that the plaintiffs, if regarded as members of a class which includes their children as well as themselves, do not meet the condition of Rule 23(a)(4) that "the representative parties will fairly and adequately protect the interests of the class." Since this is in all other respects properly a
107 class under Rule 23, the obstacle presented by this claim to represent an overly broad class may easily be obviated by dividing the mothers and their children into appropriate separate subclasses. See 3B Moore's Federal Practice, § 23.07(3). The classes consist of: (1) those mothers receiving AFDC assistance who refuse to comply with § 52-440b; and (2) the illegitimate children of those mothers.

See *Doe* v. *Shapiro*, 302 F. Supp. 761, 762 n. 3 (D. Conn. 1969), *appeal dismissed*, 396 U.S. 488, *rehearing denied*, 397 U.S. 970 (1970).

III

Claims

The plaintiffs allege that as applied to them Conn. Gen. Stats. § 52-440b violates several constitutional rights and safeguards, including due process, equal protection, and the right of privacy. In addition, they contend that the Connecticut statute is inconsistent with the underlying policies of the Act and is therefore invalid under the supremacy clause.

As will appear, their arguments in support of these contentions overlap and are variations of a single theme, namely that
in the opinion of the plaintiff mothers the adverse con-
108 sequences which mother and child may suffer by reason
of the procedures employed by the state to enforce the uncontested obligation of a man to support his child born of an unwed mother far outweigh any resultant benefit to them or to society. Without questioning the sincerity with which the plaintiff mothers hold their views, it appears to the court that the legal semantics in which they have dressed their particular views about morality, propriety, and psychology do not furnish any constitutional or statutory basis for striking down Connecticut's statute. While some of their arguments are clearly non-starters which do not merit extended discussion, the court will consider all of them seriatim.

IV

Statutory Conflict

We proceed first to examine the merits of the plaintiffs' claim that Conn. Gen. Stats. § 52–440b is so in conflict with the
AFDC Act that it must fall under the supremacy clause.[5]
109 The plaintiffs' principal argument is that this statute
is "inconsistent with the basic purpose and objective of the Social Security Act." A brief analysis of relevant portions of that Act is needed to place their argument in proper context.

A. *Social Security Act—AFDC*

Under the AFDC program, in which Connecticut participates, financial assistance is provided for dependent children and their families. The program is financed with matching funds and administered by the states. As the Supreme Court has noted in *King* v. *Smith, supra*, 392 U.S. at 316–17:

[5] "That the three-judge court itself not only had jurisdiction but would have been obliged to adjudicate this statutory claim in preference to deciding the original constitutional claim in this case follows from King v. Smith, 392 U.S. 309 (1968), where, on an appeal from a three-judge court, we decided the statutory question in order to avoid a constitutional ruling. 392 U.S. at 312 n.3." *Rosado* v. *Wyman*, 397 U.S. 397, 402 (1970). See also, *King* v. *Smith*, 392 U.S. 309 (1968); *Harmon* v. *Brucker*, 355 U.S. 579, 581 (1958).

> The AFDC program is based on a scheme of cooperative federalism. See generally Advisory Commission Report, supra, at 1–59. It is financed largely by the Federal Government, on a matching fund basis, and is administered by the States. States are not required to participate in the program, but those which desire to take advantage of the substantial federal funds available for distribution to needy children are required to submit an AFDC plan for the approval of the Secretary of Health, Education and Welfare (HEW). 49 Stat. 627, 42 U.S.C. §§ 601, 602, 603, and 604. See Advisory Commission Report, supra, at 21–23. This plan must conform with several requirements of the Social Security Act and with rules and regulations promulgated by HEW. 49 Stat. 627, as amended, 42 U.S.C. § 602 (1964 ed. Supp. II). See also HEW, Handbook of Public Assistance Administration, pt. IV, §§ 2200, 2300 * * *. [Footnote omitted.]

Within this broad statutory framework, the states are empowered to enact legislation intended to further the
110 policies of the Act, with the caveat that in so doing
they may not impinge on the constitutional rights of the recipients or contravene the supremacy clause by promulgating legislation squarely in conflict with the federal law. See, e.g., *King* v. *Smith, supra*, 392 U.S. at 318. In testing whether the Connecticut statute contravenes the Act, we follow the instructions in *New York State Dept. of Social Services* v. *Dublino*, —— U.S. ——, 41 U.S.L.W. 5047, 5052 n. 29 (June 21, 1973) quoted in the margin.[6]

The AFDC program, as with many pieces of social welfare legislation, evidences disparate values and competing policies

[6] "In considering the question of possible conflict between the state and federal work programs, the court below will take into account our prior decisions. Congress 'has given the States broad discretion,' as to the AFDC program, Jefferson v. Hackney, supra, at 545; see also Dandridge v. Williams, supra, at 478; King v. Smith, supra, at 318–319, and 'so long as the State's actions are not in violation of any specific provision of the Constitution or the Social Security Act,' the courts may not void them. Jefferson, supra, at 541. Conflicts, to merit judicial rather than cooperative federal-state resolution, should be of substance and not merely trivial or insubstantial. But if there is a conflict of substance as to eligibility provisions, the federal law of course must control * * *."

which often appear to be in conflict. We take as our touchstone the settled proposition that with regard to dependent children "* * * protection of such children is the paramount goal of AFDC." *King* v. *Smith, supra,* 392 U.S. at 325 (footnote
111 omitted). Since the implementation of Connecticut's statute may lead to the incarceration of the mother of a dependent child, the plaintiffs contend that it is implacably inconsistent with that goal. For reasons which will appear, we cannot accept that assessment.

The AFDC statute contains a frank recognition of the importance of determining the paternity of those needy children born out of wedlock. Title 42 U.S.C. §§ 602(a)(17)(A) (i) and (ii) provide:

> "(A) for the development and implementation of a program under which the State agency will undertake—
>
> "(i) in the case of a child born out of wedlock who is receiving aid to families with dependent children, to establish the paternity of such child and secure support for him, and
>
> "(ii) in the case of any child receiving such aid who has been deserted or abandoned by his parent, to secure support for such child from such parent (or from any other person legally liable for such support), utilizing any reciprocal arrangements adopted with other States to obtain or enforce court orders for support, * * *."[7]

112 The question presented is thus not whether Connecticut may act to establish the paternity of and insure the paternal support for children who qualify for AFDC benefits, a proposition we find firmly established, but rather whether

[7] The Senate Finance Committee noted with regard to the above cited 1967 amendment to the Social Security Act: "A substantial proportion of the persons receiving aid under the AFDC program are eligible because of the desertion by a parent of the child. Several provisions are already in the law and more are proposed under the bill to provide additional tools to States and to impose further obligations on them to assure the determination of legal responsibility for support and to make efforts to make these collections. The committee believes it is essential to make certain that all legally responsible parents of sufficient means make their appropriate contribution to the support of their children." S. Rep. No. 744, 1967 U.S. Code Cong. & Admin. News at 2834, 2997.

the procedure which it has selected to achieve this end is in such "direct and positive" conflict with the Act that "the two acts connot be reconciled or consistently stand together." *Kelly* v. *Washington,* 302 U.S. 1, 10 (1937). See *Snell* v. *Wyman,* 281 F. Supp. 853, 869 (S.D. N.Y. 1968) (three-judge district court), *aff'd,* 393 U.S. 323 (1969).

B. The Connecticut Statute and Its History

In order to put the present case in perspective it is important to recall earlier attempts by Connecticut to solve this problem.

Prior to enacting the challenged statute, Connecticut attempted by departmental regulations to establish the paternity of those children of unwed mothers who refused to assist in the establishment of their children's paternity by denying AFDC benefits first to the children and later to their mothers themselves. Although the state's laws were challenged on not insubstantial constitutional grounds, the three-judge district court which heard that case enjoined their continued operation on the ground that they imposed an additional and impermis-
113 sible ground of eligibility in conflict with the criteria established by Congress under the AFDC program. *Doe* v. *Shapiro, supra,* 302 F. Supp. 761; *Doe* v. *Harder,* 310 F. Supp. 302 (D. Conn.), *appeal dismissed for want of jurisdiction,* 399 U.S. 902 (1970).[8]

[8] Several district courts have followed the analysis of and reached the same result as these two Connecticut cases. See, e.g., *Story* v. *Roberts,* 352 F. Supp. 473 (M.D. Fla. 1972); *Doe v. Ellis,* 350 F. Supp. 375 (D. S.C. 1972); *Doe v. Gillman,* 347 F. Supp. 483 (N.D. Iowa 1972); *Doe v. Levine,* 347 F. Supp. 357 (S.D. N.Y. 1972); *Saiz v. Hernandez,* 340 F. Supp. 165 (D. N. Mex. 1972); *Saddler v. Winstead,* 332 F. Supp. 130 (N.D. Miss. 1971); *Doe* v. *Swank,* 332 F. Supp. 61 (N.D. Ill.), *aff'd summarily sub nom. Weaver v. Doe,* 404 U.S. 987 (1971); *Taylor v. Martin,* 330 F. Supp. 85 (N.D. Cal. 1971), *aff'd summarily sub nom. Carleson v. Taylor,* 404 U.S. 980 (1972); *Meyers v. Juras,* 327 F. Supp. 579 (D. Ore.), *aff'd summarily,* 404 U.S. 803, *rehearing denied,* 404 U.S. 961 (1971). In light of these decisions, three of which have been affirmed summarily by the Supreme Court, it was seemingly settled until recently that AFDC benefits could not be denied an otherwise qualified mother or child in an effort to coerce the mother to cooperate with local authorities in establishing her child's paternity. However, on April 30, 1973, HEW adopted a new regulation, 45 C.F.R. § 233.90(b)(4), effective July 2, 1973, which, while reaffirming the position that a child may not be denied benefits for the refusal of his parent, squarely provides: "(4) A child may not be denied AFDC either initially or subsequently because a parent or caretaker relative fails to assist: "(i) in the establishment of paternity of a

114 The plaintiffs advance the same arguments now that were used then. Yet if we look back we observe that the present Connecticut statute differs from its predecessor regulation in at least two significant particulars. While the operation of this new statute may have the undesirable effect of diminishing the amount of time that a recalcitrant mother will be able to spend with her child,[9] it does not deny to either the
115 mother or the child the benefits of food, clothing or shelter in accordance with their needs. Thus, the particular conflict with the AFDC statute relied upon by all the courts cited in footnote 8, *supra*, namely that the state cannot condition the enjoyment of benefits upon conditions not provided for by Congress, is simply not in this case. In addition, the

child born out of wedlock; or (ii) in seeking support from a person having a legal duty to support the child; *but neither this nor any other provision of these regulations should be construed to require that provision be made by a State in its AFDC program for the maintenance of a parent or caretaker who fails to provide such assistance and AFDC may be denied with respect to such parent or caretaker.*" [Emphasis added]. Here we have a regulation formally adopted by the agency entrusted with the enforcement of the Act which specifically bears on the particular problem presented in *Doe v. Shapiro* and *Doe v. Harder, supra*. To the extent that it is based on factors emanating from the agency's peculiar competence rather than considerations extracted from judicial decisions, it is entitled to great weight. Cf. *Great Northern Ry.* v. *United States*, 315 U.S. 262 (1942). Nor is the weight to be accorded to the regulation in construing the statute dependent on strict contemporaneity of the statute and the promulgated regulation. *Id.* at 275 (regulation 13 years after enactment held to merit judicial esteem). See also, *CBS v. Democratic Nat'l Committee*, 36 L. Ed. 2d 772 (1973); *Red Lion Broadcasting Co.* v. *FCC*, 395 U.S. 367 (1969); *Udall v. Tallman*, 380 U.S. 1, 16 (1965). The weight to be given this most recent regulation as evidence that refusal of aid to the parent is consistent with the federal statute in view of judicial constructions of the Act which antedated it presents an interesting question about which we might appropriately reflect. But since we distinguish *Doe v. Shapiro* and its progeny from the present case on other bases, we leave that exercise for another time.

[9] Under Connecticut's regulatory scheme responsible public officials must provide various essential services, including the service of a housekeeper or homemaker, where such services are needed. See Conn. State Welfare Dept. Social Service Policies—Public Assistance (Manual Vol. 1, § 5030 at 8 et seq., effective 8/1/72). And in order to relieve pressure on the family unit resulting from the absence of a parent from the home, 42 U.S.C. § 606(b)(1) provides that aid payments should include an amount "to meet the needs of the relative (or essential person) with whom any dependent child is living." Cf. *Dandridge* v. *Williams*, 397 U.S. 471, 496 (1970) (Mr. Justice Douglas dissenting).

statute applies across the board to all mothers of illegitimate children without regard to their or their children's status as AFDC recipients.[10]

Thus, Connecticut's statute furthers a significant purpose of the AFDC program. And unlike the *Doe* v. *Shapiro* line of cases outlined above, it does not per se add an additional eligibility requirement to those provided for by the Act.[11] No otherwise qualified recipients will be denied benefits to which they are lawfully entitled by reason of the operation of the statute. While the incarceration of a contemptuous mother may not always be in her child's best interest, this does not estab-
116 lish any irreconcilable conflict between the two acts.

The fact that the federal statute delegates to the states the responsibility of establishing a specific program to accomplish the goal precisely defined by Congress indicates that different programs might be established by the different states to deal with their own local problems.[12] Cf. *Askew* v. *American Waterways Operation*, —— U.S. ——, 36 L. Ed. 2d 280 (1973). That Connecticut may not meet its obligation under 42 U.S.C. § 602(a)(17) by denying benefits to an otherwise qualified child does not mean that it may not impose other sanctions upon the mother appropriate toward that end. The plaintiffs apparently take the position that no method of compulsion upon them is permissible. Surely the fact that the Act stopped short of spelling out the particular method to be used by the states in carrying out the required "program" does not mean that every solution to the problem of obtaining the cooperation of the mothers irreconcilably conflicts with the statute. Unlike the situation in *Doe* v. *Shapiro, supra*, where the operation of the state law was found to directly impinge upon a specific provision of the Act, this statute presents no such "direct and

[10] In the absence of any legislative history, the court inquired and was informed that the scope of this statute was intended not only to protect the state's coffers, but also to establish the paternity of all illegitimate children so that they might enjoy the long term psychological and economic advantages to be gained thereby. See *Doe* v. *Norton*, *supra*, 356 F. Supp. at 207.

[11] Cf. *New York State Dept. of Social Services* v. *Dublino*, *supra*, 41 U.S.L.W. 5047.

[12] Statistics provided by the Connecticut State Department of Health indicate that in recent years about 10% of the children born in Connecticut were born out of wedlock.

positive" conflict. The specific statutory language hardly provides support for the plaintiffs' argument that
117 the challenged statute is contrary to the underlying theory of the Social Security Act. Their separate contention that the challenged statute is in irreconcilable conflict with these federal provisions is obviously devoid of merit, and we reject it. Connecticut's statute does not violate any specific provision of the Social Security Act. *New York State Dept. of Social Services* v. *Dublino, supra*, 41 U.S.L.W. 5047. Having analyzed Connecticut's statute in relation to the federal statute, we turn next to the plaintiffs' contention that it operates to violate their rights under the Constitution.

V

Constitutional Privacy

A right to privacy, especially marital privacy, recently found to merit constitutional protection, emanates from the "penumbras" of the first, third, fourth, fifth and ninth amendments. *Griswold* v. *Connecticut*, 381 U.S. 749 (1965). This was reiterated in *Roe* v. *Wade*, 35 L.Ed.2d 147, 176–77 (1973), where the Court concisely explained that "(although) (t)he Constitution does not explicitly mention any right of privacy * * * (there is) a line of decisions * * * (wherein) the Court has recognized that a right of personal privacy, or a guarantee of certain areas or zones of privacy, does exist under the Constitution * * *. These decisions make it clear that only personal rights that can be deemed 'fundamental' or implicit in the concept of ordered liberty,' are included in
118 this guarantee of personal privacy. They also make it clear that the right has some extension to activities relating to marriage, procreation, contraception, family relationships, and child rearing and education." [Citations omitted].

Thus, the question presented is whether an unwed mother's desire to keep secret the name of her child's father is so "fundamental" or "implicit in the concept of ordered liberty" as to require constitutional protection.[13] See *Doe* v. *Norton, supra*,

[13] Even if her desire falls within the boundary of the right of privacy, its regulation may be justified by a compelling state interest through a statute narrowly drawn "to express only the legitimate interest at stake." *Roe* v. *Wade, supra*, 35 L.Ed.2d at 178.

356 F.Supp. at 205. The argument of each plaintiff mother is that because a side effect of her participation in legal action to establish the paternity of her child may result in additional strains in family relationships within the home or may unwisely force the permanent severance of relationships with his father,[14] her wish to decide for herself whether a paternity action should be brought is so closely related to the concept of privacy that it merits being included within the constitutional guarantee of personal privacy. This contention calls for analysis of the two separate aspects which conjoin to define that right. One has to do with the power to make inquiry and the other with the extent of the particular inquiry sought to be made.

119 [14] The plaintiffs contend that the statute denies due process for failure to provide for a hearing to determine in each case whether the disclosure of the name of the father will have such adverse effects upon the plaintiffs as to outweigh its benefits. When an analogous argument was made in a similar context, *Wyatt* v. *United States*, 362 U.S. 525, 530 (1960), Mr. Justice Harlan responded:

> To make matters turn upon ad hoc inquiries into the actual state of mind of particular women (who did not want to testify against their husbands) thereby encumbering Mann Act trials with an issue of the greatest subtlety, is hardly an acceptable solution.

Accordingly, we reject that argument in this case.

Although we hold that the constitution does not require such an analysis to be made in order to sustain the validity of the statute, this does not mean that the sanctions permitted by the statute are likely to be woodenly imposed without regard for impact upon the family.

We are unwilling to assume such an unthinking automatic exercise of judicial power by the state judiciary. In the event of a mother's failure to disclose the father's name, the statute provides that she "may" be found in contempt and "may" be fined or imprisoned. This authorizes the exercise of sound judicial discretion to determine whether in a particular case non-disclosure warrants a finding of contempt or the imposition of penalties. In this regard, the statute is in marked contrast to other Connecticut disclosure statutes, which provide that in the event a person obligated to furnish information refuses to do so, a state judge "shall commit such person to jail until he testifies . . ." *E.g.*, Conn. Gen. Stats. § 17-2a (witnesses at welfare department fair hearings); Conn. Gen. Stats. § 12-2 (witnesses at tax department hearings); Conn. Gen. Stats. § 30-8 (witnesses at liquor control commission hearings). We need not anticipate at this point the variety of situations that will confront the state circuit court judges before whom contempt citations will be sought. It is sufficient in this litigation, which attacks the statute on its face, to note that the statute, in its application, does not preclude and, indeed, appears to specify the exercise of sound judicial discretion.

In a related argument the plaintiffs contend that in requiring disclosure of the father's name in all cases, and prohibiting the mother from contesting

120 *A. The Scope of the Power*

The broad scope of the government's power to compel testimony and the rationale on which it is based are fully delineated in *Kastigar* v. *United States*, 406 U.S. 441, 443–44 (1972):

121 The power of government to compel persons to testify in court or before grand juries and other governmental agencies is firmly established in Anglo-American jurisprudence. The power with respect to courts was established by statute in England as early as 1562, and Lord Bacon observed in 1612 that all subjects owed the King their 'knowledge and discovery.' While it is not clear when grand juries first resorted to compulsory process to secure the attendance and testimony of witnesses, the general common law principle that 'the public has a right to every man's evidence' was considered an 'indubitable certainty' which 'cannot be denied' by 1742. The power to compel testimony, and the corresponding duty to testify, are recognized in the Sixth Amendment requirements that an accused be confronted with the witnesses against him, and have compulsory process for obtaining witnesses in his favor. The first Congress recognized the testimonial duty in the Judiciary Act of 1789, which provided for compulsory attendance of witnesses in the federal courts. Mr. Justice White noted the importance of this essential power of government in his concurring opinion in Murphy v. Waterfront Comm'n, 378 US 52, 93–94, 12 L Ed 2 678, 704, 84 S Ct 1594 (1964):

> Among the necessary and most important of the powers of the States as well as the Federal Government to assure the effective functioning of government in an ordered society is the broad power to compel residents to testify in court or before grand juries or agencies. See Blair v. United States, 250 US 273 (63 L Ed 979, 39 S Ct 468). Such testimony constitutes one of the Government's primary sources of information. [Footnotes omitted].

As a broad proposition, this power extends to and includes with particular pertinence, those situations in which the testimony sought to be elicited may prove embarrassing, or otherwise impinges upon the sensitivities of the witness whose testimony is sought. As a noted commentator has stated:

122 (T)he sacrifice may be of his privacy (or) of the knowledge which he would preferably keep to himself because of the disagreeable consequences of disclosure. This inconvenience which he may suffer, in consequence of his testimony, by way of enmity or disgrace or ridicule or other disfavorable action of fellow members of the community, is also a contribution which he makes in payment of his duties to society in its function of executing justice * * *. When the course of justice requires the investigation of the truth, no man has any knowledge that is rightly private. 8 Wigmore, Evidence § 2192 at 72 (McNaughton rev. 1961) [footnote omitted].

See also, *Branzburg* v. *Hayes*, 408 U.S. 665 (1972).

The only limitation on that power found in the Constitution is the fifth amendment's privilege against self-incrimination, which is that "no person shall be compelled in any criminal case to be a witness against himself." This is in no way implicated here. We are not confronted with the problem of balancing the benefit to the state of the required information against the burden to the plaintiffs from the risks of self-incrimination as in *California* v. *Byers*, 402 U.S. 424 (1971). The competing interests at this level have been resolved in favor of the plaintiffs.

In related sections of the challenged statute, the state furnishes an immunity bath embracing "transactional" as well as "use" restrictions held sufficient in *Kastigar* v. *United*

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the desirability of that disclosure in any particular case, the statute imposes an unconstitutional irrebutable presumption that disclosure is in the best interest of the child. This contention, if accepted, would stretch the concept of an irrebutable presumption out of recognition. The irrebutable presumptions struck down in *Bell* v. *Burson*, 402 U.S. 535 (1971), and *Stanley* v. *Illinois*, 405 U.S. 645 (1972), all concerned issues of fact: the fault of a driver involved in an accident; and the fitness as a father of a man who sired an illegitimate child to be its guardian. The present case presents no presumption of fact in any sense. Connecticut's avowed goal is getting fathers to support their children, illegitimate or otherwise. This is simply on a different plane from the question of whether, in a given child's case, it is better that his father's identity remain undisclosed. It is a legislative value judgment about the responsibility—financial and perhaps moral—of all fathers. The theory of *Bell* and *Stanley* cannot avail the plaintiffs here. See also, *Vlandis* v. *Klein*, 41 U.S.L.W. 4796 (June 11, 1973).

123 *States, supra,* 406 U.S. 441.[15] Indeed, the immunity granted extends to the putative father as well.[16] With the privilege not to be compelled to incriminate themselves completely safeguarded, all that could arguably support the plaintiffs' unwillingness to answer the particular inquiry authorized by the state would be simply a rule of evidence classified as an evidentiary privilege.[17]

The privilege asserted by the unwed mothers has its closest analogy to the marital privilege sometimes afforded to husband and wife.[18] But that privilege has no roots in the Constitution. In *Wyatt* v. *United States,* 362 U.S. 525
124 (1960), the Court held that an objecting wife could be compelled to testify against her husband in a Mann Act prosecution notwithstanding her claim of marital privilege. The rationale for the denial of the privilege in that case was anchored in the legislative judgment underlying the Mann Act and not in the Constitution:

> "Applying the legislative judgment underlying the Act, we are led to hold it not an allowable choice for a prostituted witness-wife 'voluntarily' to decide to protect her husband by declining to testify against him." *Id* at 530 (Mr. Justice Harlan for the majority).

All of the Justices agreed upon the controlling principle:

> That this decision is uniquely legislative and not judicial is demonstrated by the fact that, both in England and in this country, changes in the commonlaw privilege have been wrought primarily by legislatures. *Id.* at 535 (dissenting opinion of Mr. Chief Justice Warren) (footnote omitted).

The real divergence of views which emerged concerned not the authority of the legislature to compel the testimony, but only over whether "prior congressional action provide(d) no support for the Court's decision," *id.* at 535; there was no disagreement over the basis of the authority on which the decision should rest. In both opinions, there was a complete absence of any indication of a link between a husband-wife privilege and a right which is "fundamental" in the sense that it is among the rights and liberties protected by the Constitution. Testimonial privileges arising out of confidential
125 relationships are based on a legislative judgment that the need for preserving from exposure disclosures made in confidence outweighs the search for truth, but none of these has even been considered as falling under the umbrella of constitutional protection. Cf. *Branzburg* v. *Hayes, supra,* 408 U.S. 665.

Furthermore, the privilege to withhold information asserted here concerns a relationship at least one step removed from that of husband and wife. Whatever merit there may be in the argument that a privilege in the wife not to testify against her husband preserves a marital relationship, the "policy of the privilege applies only to these who profess to maintain toward each other the legal relationship of husband and wife." 8 Wigmore, Evidence § 2230 (McNaughton rev. 1961).

The relationship which these unwed mothers seek to protect from disclosure is emphatically different. There is no privilege to withhold the testimony of a mere paramour or witness. *Id.* In the absence of any legal relationship the alleged "right" of these plaintiffs to refuse to answer the inquiries directed by the statute is devoid of any elements that comprise a jural interest.

B. The Extent of the Invasion

But even if we ignored the character of the relation-
126 ship urged to merit such protection and equated it with the more durable one of legal husband and wife, the disclosure required of these plaintiffs would not invade any "zone of privacy." Viewed from the perspective of the class

[15] Public Act 439 § 2 (1971) amending Conn. Gen. Stats. § 52-435(b). This section tracks the one set forth below in footnote 16 except that "mother" is substituted for "putative father."

[16] Public Act 439 § 1 (1971), Conn. Gen. Stats. § 52-435c provides: "The putative father of any child for whom adjudication of paternity is sought in paternity proceedings shall not be excused from testifying because his evidence may tend to disgrace him or incriminate him; nor shall he thereafter be prosecuted for any criminal act about which (1) he testifies in connection with such proceedings or (2) he makes any statement prior to such proceedings with respect to the issue of paternity."

[17] We do not call the plaintiffs' alleged right not to testify a privilege in order to fit it into the now rejected "concept that constitutional rights turn upon whether a governmental benefit is characterised as a 'right' or as a 'privilege,'" *Graham* v. *Richardson,* 403 U.S. 365, 374 (1971), but only to signify the mere negative of the duty to testify.

[18] For the history and policy of this somewhat questionable privilege see 8 Wigmore, Evidence §§ 2227, 2228 (McNaughton rev. 1961). See also, H.R. Rep. No. 92-359, 92d Cong., 2d Sess., reported in 1972 U.S. Code Cong. & Admin. News at 836.

denied the privilege of remaining silent the "embarrassing" information has in large part been widely disclosed before any inquiries are made.[19] Furthermore, the inquiry focuses on identity of the father, not on the mother's misconduct. The question asked of the unwed mother is, "Who is the father of your child?" The object of the inquiry is to enforce a familial monetary obligation, not to interfere with personal privacy. There is no intrusion into the home nor any participation in interpersonal decisions among its occupants, even to the extent held permissible in *Wyman* v. *James*, 400 U.S. 309 (1971).[20] The statute does not forbid an unwed mother to have a man
127 in the house or even in her bedroom. Compare *King* v. *Smith*, *supra*, 392 U.S. 309. The only restriction it imposes upon either the unwed mother or the biological father to do as they please or make any decisions they wish in whatever relationship they desire to maintain is that the father satisfy his legal obligation to support his own child and that the mother provide what information she possesses useful toward that end.[21]

[19] See *Roe* v. *Wade*, *supra*, 35 L.Ed.2d at 180: "The pregnant woman cannot be isolated in her privacy. She carries an embryo and, later, a fetus * * *. The situation is therefore inherently different from marital intimacy, or bedroom possession of obscene material, or marriage, or procreation, or education, with which Eisenstadt, Griswold, Stanley, Locing, Skinner, Pierce, and Meyer were respectively concerned * * *. The woman's privacy is no longer sole and any right of privacy she possesses must be measured accordingly."

[20] In *Wyman* v. *James*, a regulation mandating visits to the home of AFDC families by a caseworker at least once in every three months was upheld as reasonable to (1) serve the paramount needs of the dependent child; (2) to determine that state funds were being properly used; (3) as not unnecessarily intruding on the beneficiary's rights in her home; (4) as providing essential information not obtainable from secondary sources; and (5) as not being oriented toward a criminal investigation.

[21] Our attention was called to the case of one mother of a child born out of wedlock who, although qualified to receive AFDC welfare benefits, refused to apply for them rather than disclose the name of her child's father. An argument against the home visitation regulation in *Wyman* v. *James*, *supra*, 400 U.S. at 324, based on hypothetically similar circumstances was rejected: "So here Mrs. James has the 'right' to refuse the home visit, but a consequence in the form of cessation of aid flows from that refusal. The choice is entirely hers, and nothing of constitutional magnitude is involved."

We conclude that the compulsion on the plaintiffs authorized by the statute does not impinge on any "fundamental" rights of the plaintiffs related to privacy.

We turn next to the contention of the plaintiffs that the statute violates their rights to equal protection of the laws.

128 VI

Equal Protection

The Supreme Court has emphasized two distinct standards for testing claims of denial of equal protection. To determine which test applies, our initial inquiry is whether the statute

> (*1*) "operates to the disadvantage of some suspect claims or impinges upon a fundamental right explicitly or implicitly protected by the Constitution, thereby requiring strict judicial scrutiny * * *. If not, (*2*) the (Connecticut) scheme must still be examined to determine whether it rationally furthers some legitimate, articulated state purpose and therefore does not constitute an invidious discrimination in violation of the Equal Protection Clause of the Fourteenth Amendment." *San Antonio Independent School Dist.* v. *Rodriguez*, 36 L. Ed. 2d 16, 33 (1973) [22]

[22] Until fairly recently, few would take any exception to this capsule summary of what has come to be referred to as the two-tiered standard of equal protection; the first requiring "strict judicial scrutiny," and the second requiring only some rational relationship to a legitimate state purpose. There is little doubt that this once-settled differentiation is currently being critically re-examined, particularly in this circuit, for symptoms of what Chief Judge Kaufman described in *City of New York* v. *Richardson*, 473 F. 2d 923, 931 (2d Cir.), *cert. denied sub nom. Wyman* v. *Lindsay*, 41 U.S.L.W. 3655 (June 18, 1973), as the giving way of the two-tiered equal protection standards "to a more graduated sliding-scale test." See generally, Gunther, The Supreme Court, 1971 Term, Forward, In Search of Evolving Doctrine on a Changing Court: A Model for a Newer Equal Protection, 86 Harv.L. Rev. 1 (1972). See also, *Boraas* v. *Village of Belle Terre*, 476 F. 2d 806 (2d Cir. 1973); *Aguayo* v. *Richardson*, 473 F. 2d 1090 (2d Cir. 1973). It may be still unclear whether any set of new standards has been adopted, a situation which Judge Timbers believes is unsatisfactory. See *Boraas* v. *Village of Belle Terre*, *supra*, 476 F. 2d at 826 (dissenting from 4–4 denial of en banc reconsideration). Judge Newman in *Henry* v. *White*, Civil 15, 322 (D. Conn. May 2, 1973), citing to *San Antonio Independent School Dist.* v. *Rodriguez*, *supra*, 36 L.Ed.2d 16, and *McGinnis* v. *Royster*, 35 L.Ed.2d 282, 288–89 (1973),

129 Since the nature of the "rights" asserted by the plaintiffs are not in any sense "fundamental," the plaintiffs offer an alternative argument for subjecting the statute to "strict judicial scrutiny." This we also hold to be inapplicable.

We do not quarrel with the view that a discriminatory classification based upon illegitimacy of children ought to be inherently suspect.[23] But the plaintiffs' contention that the statute must be subjected to strict judicial scrutiny on the
130 ground that it adversely affects a suspect class amounts to no less than standing the doctrine on its head. Instead of operating to the disadvantage of children born out of wedlock the statute operates to their benefit.[24] The statute imposes no additional burden upon them. To the contrary, the statute under consideration operates prophylactically against the adverse differential treatment which the unwed mothers would

observed that "more recent cases suggest that the rational relationship test is alive and well."

The factual situation presented in this case warrants no grand exegesis of where the law of equal protection is headed. It will suffice to note that to the extent that the "legitimate articulated state purpose" referred to by Mr. Justice Powell in *Rodriguez, supra*, 36 L.Ed.2d at 33, and in *McGinnis, supra*, 35 L.Ed.2d at 289, may be construed to establish a degree of rationality more akin to that in *Boraas, supra*, 476 F.2d 806, than to the "minimum rationality" of the older standard we adopt it for use in this case.

[23] "Status of birth, like the color of one's skin is something which the individual cannot control, and should generally be irrelevant in legislative considerations. Yet illegitimacy has long been stigmatized by our society. Hence discrimination on the basis of birth—particularly when it affects innocent children—warrants special consideration." *San Antonio Independent School Dist.* v. *Rodriguez, supra*, 36 L.Ed. 2d at 87 (dissent of Marshall, J.). See also, *Weber* v. *Aetna Cas. & Sur. Co.*, 406 U.S. 164, 175 (1972).

[24] At this point, the interests of the unwed mothers and those of their children part company. In *Wyman* v. *James, supra*, 400 U.S. at 318, this discrimination between the interests of the unwed mother and her child was emphasized by Mr. Justice Blackmum:

"There are a number of factors that compel us to conclude that the home visit proposed for Mrs. James is not unreasonable:

"1. The public's interest in this particular segment of the area of assistance to the unfortunate is protection and aid for the dependent child whose family requires such aid for that child. The focus is on the *child* and, further, it is on the child who is *dependent*. There is no more worthy object of the public's concern. The dependent child's needs are paramount, and only with hesitancy would we relegate those needs, in the scale of comparative values, to a position secondary to what the mother claims as her rights."

impose on their children. Indeed, if the legislature were to enact a law protecting the "right" of unwed mothers to exclude their children from the benefit of paternal support, it would be struck down. In *Gomez* v. *Perez*, 35 L.Ed.2d 56, 60 (1973), the Court declared:

131 "We therefore hold that once a State posits a judicially enforceable right on behalf of children to needed support from their natural fathers there is no constitutionally sufficient justification for denying such an essential right to a child simply because her natural father has not married her mother. For a State to do so is 'illogical and unjust.' Weber v. Aetna Casualty & Surety Co., supra, at 175." [25]

The effect of the statute is consistent with the trend of the law to separate the label "illegitimate" from the word "child" to prevent the exclusion of children of unwed mothers from benefits available to other children. One of the reasons for denying the plaintiffs' application for a temporary injunction against enforcement of the statute was that hardships would fall more heavily on the children than on their mothers.[26] See *Doe* v. *Norton*, supra, 356 F. Supp. 202.

132 The statute at issue involves neither discrimination against a "suspect" classification nor impinges upon a "fundamental" interest so as to require the application of the

[25] It has long been the policy of Connecticut to require a father to support his illegitimate child. *State* v. *Wolfe*, 152 Conn. 199, 203 (1964); see also, *Franklin* v. *Congelosi*, 6 Conn. Cir. Ct. 357 (1970). And if there is any universal moral law it is that parents must nuture and support their young children; this is a duty that belongs to a man as a man, and not simply as a member of a civil society.

[26] Insofar as the operation of the statute strikes down a discrimination against the plaintiff children as illegitimates it should receive favorable judicial consideration rather than "strict scrutiny." *Weber* v. *Aetna Cas. & Sur. Co., supra*, 406 U.S. at 176. During the course of recent intensive analysis of equal protection standards the Supreme Court has consistently held that legislative discrimination to the *disadvantage* of children because of their out-of-wedlock birth could be justified only by a showing that the state interest furthered by the statute was "substantial." *Id.* at 170; *Gomez* v. *Perez, supra*, 35 L. Ed. 2d 56; *Levy* v. *Louisiana*, 391 U.S. 68 (1968); *Glona* v. *American Guarantee & Liab. Ins. Co.*, 391 U.S. 73 (1968); *Labine* v. *Vincent*, 401 U.S. 532 (1971); and see *Davis* v. *Richardson*, 342 F. Supp. 588 (D. Conn.), *aff'd*, 409 U.S. 1069 (1972).

"strict scrutiny" test. We turn, therefore, to the less stringent test of equal protection which is whether the statute "rationally furthers some legitimate articulated state purpose."

A. Governmental Interest

The plaintiffs urge upon us the test of equal protection adopted in *Boraas* v. *Village of Belle Terre, supra,* 476 F. 2d 806, and formulated in *Royster Guano Co.* v. *Virginia,* 253 U.S. 412, 415 (1920):

> The classification must be reasonable, not arbitrary, and must rest on some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.

Since the reasonableness of the classification should be considered in relation to the object of the statute, we begin by first identifying the purpose of the statute.[27] Although
133 one of the important by-products of the operation of the statute is the long term benefit it secures to the children by the early establishment of their paternity, see *Doe* v. *Norton, supra,* 356 F. Supp. 202, its primary purpose is to enforce the obligation of a father to support his own child. There is no need to theorize. The face of the statute furnishes sufficient reliable guidance to its purpose, especially when read together with the complementary sections of the Social Security Act, as elaborated above in Part IV. Cf. *Richardson* v. *Belcher,* 404 U.S. 78 (1971). Consequently, we have no occasion to resort to that more embrasive standard of equal protection which permits a purpose to be found from "any state of facts which may be reasonably conceived to justify it." *McGowan* v. *Maryland,* 366 U.S. 420, 426 (1961), *quoted with approval in Dandridge* v. *Williams,* 397 U.S. 471, 485 (1970). The defendant public official, who administers the laws under which welfare assistance is given to these plaintiffs, is not only authorized, but required, to pro-

[27] The purpose need not have been a main objective of the statute or even one the legislature had in mind. *Fleming* v. *Nestor,* 363 U.S. 603, 612 (1960).

"(O)ur decisions do not authorize courts to pick and choose among legitimate aims to determine which is primary and which subordinate * * *. So long as the state purpose upholding a statutory class is legitimate and nonillusory, its lack of primacy is not disqualifying." *McGinnis* v. *Royster, supra,* 35 L.Ed.2d at 292.

ceed under the statute in order to establish the primary obligation of the father to support his child as one of the "re-
134 sources" which the state is entitled to consider in ascertaining the plaintiffs' eligibility for AFDC benefits. See 42 U.S.C. § 602(a)(7). Indeed, welfare beneficiaries may be required to assign any property they may have, or which they might in the future obtain, as security for repayment of the benefits they receive from the state under its welfare laws. See *Snell* v. *Wyman, supra,* 281 F. Supp. 853 (S.D. N.Y. 1968); *Charleston* v. *Wohlgemuth,* 332 F. Supp. 1175 (E.D. Pa. 1971), *aff'd without opinion,* 405 U.S. 970 (1972).

B. The Classification

The plaintiff mothers assert a right to be free from a discriminatory classification based on the fact that they are unwed mothers who receive public assistance. While shaping their claim in that form may appear to present some abstract inequality to complain about, that is accomplished only at the cost of leaving something out. This statute which imposes a duty upon an unwed mother to disclose the name of the putative father of her child does *not* distinguish between unwed mothers who receive public assistance and those who do not. The statute permits the compelled disclosure of the name of the father from any mother of an illegitimate child, viz: "to the welfare commissioner, if such child is a recipient of pub-
135 lic assistance, or to a selectman of a town in which such child is a recipient of general assistance, or *otherwise* to a guardian or a guardian ad litem of such child, * * *."[28] [Emphasis added].

In an attempt to bolster their argument, the plaintiffs suggest that it is unrealistic to expect any guardian appointed by the probate court to resort to the statute and that such a guardian would normally support the child himself. They also suggest that it is questionable if one whose parental rights are terminated pursuant to such an appointment would still have a legal duty to support the child. No support is offered for either argument and we reject both. That displacing a natural father as the guardian of the person or of the estate of his minor child

[28] The statute also applies to "the mother of any child born to a married woman during marriage which child shall be found not to be the issue of the marriage terminated by a divorce decree or by decree of any court of competent jurisdiction."

does not eliminate his obligation to continue to provide for its support is too settled to merit discussion. There are thousands of valid child support decrees against fathers who do not have custody of either the person or estate of their children.

If we were to accept the assumption of the plaintiffs that because of the division of authority among different persons to initiate proceedings under the statute proportionately fewer such proceedings would be brought by guardians or
136 guardians ad litem than by the commissioner, this would not render the classification offensive to the equal protection clause.[29] As Judge Frankel stated in *Snell* v. *Wyman*, *supra*, 281 F. Supp. at 865:

> Like the life of the law generally, the Fourteenth Amendment was not designed as an exercise in logic. It is ancient learning by now that a classification meets the equal protection test 'if it is practical, and is not reviewable unless palpably arbitrary.' Orient Insurance Co. v. Daggs, 172 U.S. 557, 562, 19 S. Ct. 281, 282, 43 L. Ed. 552 (1869). If the classification has 'some reasonable basis,' it cannot be held offensive to the Equal Protection Clause "because it is not made with mathematical nicety or because in practice it results in some inequality." Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61, 78, 31 S. Ct. 337, 340, 55 L. Ed. 369 (1911). "The problems
> 137 of government are practical ones and may justify, if they do not require, rough accommodations,—illogical, it may be, and unscientific."

[29] Perhaps the benefits which the statute authorizes for all illegitimate children and their mothers may not be sought after as assiduously by others legally responsible for the estates of the children. But there is no basis for assuming that the legislature intended arbitrarily to leave one class of illegitimate children without meaningful protection. The statute makes available in their behalf the same remedies that are enforceable by a welfare commissioner or a town selectman who has provided general assistance for needy families containing illegitimate children. Because the state may not be able to bring the benefits of the statute to all, it is not precluded from benefiting some. "The law does all that is needed when it does all that it can, indicates a policy, applies it to all within the law and seeks to bring within the lines all similarly situated so far and so fast as it means will allow." *Buck* v. *Bell*, 274 U.S. 200, 208 (1927) (Holmes, J.). It is not a basis for any complaint by the plaintiffs that the benefits extended to them are not extended to others similarly situated. See *Katzenbach* v. *Morgan*, 384 U.S. 641, 656–57 (1966).

Metropolis Theatre Co. v. City of Chicago, 228 U.S. 61, 69–70, 33 S. Ct. 441, 443, 57 L. Ed. 730 (1913).

C. The Rational Relationship

Even if, as the plaintiffs argue, the statute ought logically to be construed to create a separate classification affecting only unwed mothers of illegitimate children who receive some form of public assistance,[30] that particular classification is directly linked to the public interest the statute is designed to secure. In the case of these plaintiffs, it is the state, not a private party, which furnishes to the plaintiffs and their children welfare assistance in accordance with their needs. Because the state provides those benefits, it is "rational" that it should take steps to enforce the prior obligation of their fathers to provide that support. It is not disputed that the only source of infor-
138 mation about the identity of the fathers of these children is the knowledge possessed by their unwed mothers. The classification is reasonable rather than "arbitrary or capricious" because it bears a rational relationship to a legitimate state purpose. *Weber* v. *Aetna Cas. & Sur. Co.*, *supra*, 406 U.S. at 172.

D. The Interests Adversely Affected

Since there is no basis for objection to the principle that parental responsibility should be enforceable, the argument shifts to one about means rather than ends. The plaintiff mothers contend that the sanctions which Connecticut permits its courts to impose upon uncooperative unwed mothers are impermissible under the Act. The plaintiffs argue that less important than the detection of the father to enforce his obligation are the consequences to the mother and child of the detection process. There is undoubted power of the government "to compel persons to testify in court or before grand juries and other governmental agencies * * *." *Kastigar* v. *United States*,

[30] "There is hardly a law on the books that does not affect some people differently from others. But the basic concern of the Equal Protection Clause is with state legislation whose purpose or effect is to create discrete and objectively identifiable classes. And with respect to such legislation, it has long been settled that the Equal Protection Clause is offended only by laws that are invidiously discriminatory—only by classifications that are wholly arbitrary or capricious. See, e.g., *Rinaldi* v. *Yeager*, 384 U.S. 305, * * *." *San Antonio School Dist.* v. *Rodriguez*, *supra*, 36 L.Ed 2d at 58 [footnote omitted].

supra, 406 U.S. at 443. While any imprisonment, of course, has punitive and deterrent effects, it is clear that the character and purpose of any imprisonment meted out under this statute would be for refusal to testify.

The proceeding under the statute is a civil, rather
139 than a criminal one.[31] As the court held in *Shillitani* v. *United States*, 384 U.S. 364, 368 (1966), the sentence must be viewed not as punishment for violation of state criminal laws but as " 'essentially a civil remedy designed for the benefit of other parties and (one which) has quite properly been exercised for centuries to secure compliance with judicial decrees.' Green v. United States, 356 U.S. 165, 197 (1958) (Black, J., dissenting)."

> (I)t is beyond dispute that there is in fact a public obligation to provide evidence, see United States v. Bryan, 339 U.S. 323, 331; Blackmer v. United States, 284 U.S. 421, 438, and that this obligation persists no matter how financially burdensome it may be. *Hurtado* v. *United States*, 35 L.Ed.2d 508, 518 (1973) [footnote omitted].

Furthermore, unlike the plaintiff class in *Hurtado*, who were held to be kept justifiably incarcerated as material witnesses until the commencement of the trial at which they were to testify, these plaintiffs "carry 'the keys of their prison in their own pockets.' In re Nevitt, 117 F. 448, 461 (C.A. 8th Cir. 1902) * * *. In short if the petitioners had chosen to obey the order they would not have faced jail." *Shillitani* v. *United States*, *supra*, 384 U.S. at 368. Cf. *Linda R.S.* v. *Richard D.*, 35 L.Ed.2d 536, 541 (1973).

The choice of means may be regarded by some as
140 harsh but "(i)t is not for us to evaluate the state's choice of means. If these means are rationally related to a proper end, as they are in this case, we have no power to go further." *Hagans* v. *Wyman*, 471 F. 2d 347, 350 (2d Cir. 1973).

The incarceration of an unwed mother for contempt, or for any other unlawful behavior, may work to the disadvantage of her child. Yet no one would be heard to argue that motherhood per se provides an absolute defense to the imposition of undesired but otherwise lawful sanctions simply because that

[31] The parties agreed to this by stipulation.

mother's child might suffer from the separation resulting from her incarceration.

That the method adopted by Connecticut's legislature is entirely permissible has been suggested in *Cooper* v. *Laupheimer*, 316 F. Supp. 264, 270 (E.D. Pa. 1970), where the court in reasoned dictum stated:

> Pennsylvania has at its disposal methods, consistent with the Social Security Act, by which it can recover excess payments. It may institute criminal prosecution against a recipient who has fraudulently obtained a duplicate payment, and upon conviction, obtain restitution, a fine and/or imprisonment. It may also file a civil action, obtain a judgment, and satisfy the judgment when the recipient is able to pay. The state may not, however, seek to protect its interests by a method which violates the Act when it has available other legitimate means.[32]

141 Throughout this case, the plaintiffs have argued as if the touchstone of our inquiry was whether the expected advantages to the state from the statute were outweighed by the harmful effects to the families affected by its enforcement. But even if the task of balancing these competing values was for the judiciary, rather than for the legislature, we would not find any basis for depriving the state of this traditional method of compelling witnesses to give answers to the inquiries under the statute. In holding that the policy favoring the right of the state to have every person's testimony may be enforced by imprisoning the witness who refuses to answer, the Court has recently held that there is no exception for one who is reluctant to testify, either for his own behalf or to shield another because of the adverse effect which such testimony might have on his future relationship with the person who is the object of the inquiry. See *Branzburg* v. *Hayes*, *supra*, 408 U.S. 665. The ex-

[32] In *Cooper* v. *Laupheimer*, the court ruled that Pennsylvania's attempt to adjust past overpayments of AFDC assistance by recoupment from subsequent grants was inconsistent with the statutory requirement that AFDC benefits be furnished to all eligible individuals with reasonable promptness. For a later case in this circuit holding that a rent payment, advanced to avoid eviction of AFDC recipients who had spent the portion of their grant designated for shelter for some other purpose, could be recouped out of later grants without denying equal protection nor conflicting with the Act. See *Hagans* v. *Wyman*, *supra*, 471 F. 2d 347.

posure of the plaintiffs in this case to imprisonment for contempt does not constitute an unacceptable sacrifice of competing policy interests nor contravene the Act.

To sum up our analysis of the plaintiffs' equal pro-
142 tection claim—we decide that the challenged statute does not suffer any constitutional infirmity under the equal protection clause because after consideration "of the nature of the unequal classification under attack, the nature of the rights adversely affected and the governmental interests urged in support of it," the statute has "a substantial relationship to a lawful objective." *Boraas* v. *Village of Belle Terre, supra,* 476 F. 2d at 814. What the Court said in *Dandridge* v. *Williams, supra,* 397 U.S. at 487, and requoted for emphasis in *Jefferson* v. *Hackney,* 406 U.S. 535, 551 (1972), is pertinent here:

> We do not decide today that the (state law) is wise, that it best fulfills the relevant social and economic objectives that (the state) might ideally espouse, or that a more just and humane system could not be devised. Conflicting claims of morality and intelligence are raised by opponents and proponents of almost every measure, certainly including the one before us. But the intractable economic, social, and even philosophical problems presented by public welfare programs are not the business of this Court * * *. (T)he Constitution does not empower this Court to second-guess state officials charged with the difficult responsibility of allocating limited welfare funds among the myriad of potential recipients.

CONCLUSION

We, therefore, conclude that the statute in issue does not conflict with any provision of the Social Security Act; that it rationally furthers a legitimate articulated state
143 purpose in establishing the paternity of children born out of wedlock and securing support for them; that it does not invidiously discriminate against any of the plaintiffs in violation of the equal protecton clause of the fourteenth amendment; that its operation does not constitute an unwarranted invasion of privacy; and that it violates no rights guaranteed by the Constitution.

The application for a permanent injunction is denied, and the case is dismissed.

So Ordered.

Dated September 5, 1973.

WILLIAM H. TIMBERS,
United States Circuit Judge.
M. JOSEPH BLUMENFELD,
Chief United States District Judge.
JON O. NEWMAN,
United States District Judge.

Concurring in the result with opinion.

144 NEWMAN, District Judge (concurring):

I agree with the Court that Conn. Gen. Stat. § 52–440b is not unconstitutional on its face, but I believe there is an additional constitutional question that will have to be considered when the statute is applied to specific individuals. This concerns the extent of protection afforded by the constitutional right of privacy.

The Court's opinion considers and rejects primarily the Fifth Amendment and testimonial privileges as possible barriers to a mother's enforced disclosure of the identity of an illegitimate child's father. I agree with those conclusions and with the Court's further observation that the statute on its face does not invade any constitutionally protected zone of privacy. The statute's facial validity in this regard is properly upheld in the precise sense that not every application of the statute would achieve an unconstitutional result. But without anticipating all of the situations that will arise in the implementation of this statute, I think it is important to point out that a constitutionally protected right of privacy will be implicated and may well prevail against the statute's enforcement in some situations.

There can be no question that liberty, within the meaning of the Fourteenth Amendment, includes privacy with respect to some aspects of family life and sexual intimacy.
145 *Roe* v. *Wade,* 410 U.S. 113, 153 (1973); *Eisenstadt* v. *Baird,* 405 U.S. 438 (1972); *Loving* v. *Virginia,* 388 U.S. 1 (1967); *Griswold* v. *Connecticut,* 381 U.S. 479 (1965). The Chief Justice has only recently observed that the "Constitution * * * protects * * * special privacy rights such as those of marriage, procreation, motherhood, child rearing, and educa-

tion." *United States* v. *Orito*, —— U.S. ——, —— (June 21, 1973). In its application, this statute will involve privacy rights concerning both procreation and child rearing. The latter is evident. It is certainly an important aspect of child rearing for a mother to decide whether to secure legally some actual or potential financial benefit for her child at the expense of fracturing an amicable father-child relationship or even of harming the child by inflicting upon it distressing knowledge such as incestuous parentage. Decisions on such matters would plainly seem to enjoy no less constitutional protection than the decision whether to educate the child at a public or private school. *Cf. Pierce* v. *Society of Sisters*, 268 U.S. 510 (1925). The relationship between non-disclosure of the father's name and privacy concerning procreation requires brief elaboration.

Unlike *Roe*, where the plaintiff wanted to have an abortion, and *Griswold*, where the plaintiff wanted to use a contraceptive, these plaintiffs do not claim a right to do something but to maintain secrecy concerning what they have done. More precisely, each plaintiff asserts the right to maintain secrecy
146 concerning the identity of the man with whom she was intimate.[1] In the First Amendment context, the Supreme Court has recognized that some aspects of constitutionally protected conduct may be shielded from state-compelled disclosure concerning such conduct. Thus the right of N.A.A.C.P. members to join together to advance their purposes carried with it a right to maintain secrecy concerning the identity of the members as against Alabama's interest in enforcing its corporate regulations. *N.A.A.C.P.* v. *Alabama*, 357 U.S. 449 (1958). See also *Bates* v. *Little Rock*, 361 U.S. 516 (1960). Since privacy is the central concept underlying constitutionally protected rights pertaining to sexual matters, *Griswold* v. *Connecticut*, *supra*, it seems obvious that such rights carry with them concomitant rights to maintain secrecy concerning sexual intimacies. It is true, as the Court observes, that the inquiry of the challenged statute focuses on the father's identity, but

[1] The Court properly observes that, wholly apart from the state-compelled inquiry, the fact of the mother's pregnancy has no doubt been disclosed to some extent. But simply because the fact of pregnancy and subsequent birth is known, either widely or narrowly, in the case of mothers who not infrequently give birth to illegitimate children far removed from their communities, all rights to privacy concerning the identity of the paramour do not automatically disappear.

the mother cannot respond to the inquiry without disclosing a very private fact—the name of the person with whom she had sexual relations.

Whether related to privacy concerning child rearing or procreation, recognition of some constitutional protection surrounding the identity of one's sexual partner does not end, but only begins the pertinent inquiry, namely—whether the state has shown sufficient justification to override the protected interest. Unlike the constitutional privilege
147 against self-incrimination, the privacy protection of the Fourteenth Amendment is subject to the legitimate and substantial concerns of the state. See *N.A.A.C.P.* v. *Alabama*, *supra*. The Court identifies as the primary purpose of § 52-440i the enforcement of a father's obligation to support his child.[2] In some circumstances achieving that purpose may well be sufficient to justify impairment of the mother's right to privacy. A strong case would be presented if the father's identity is ascertainable and the three-year statute of limitations for paternity actions, § 52-435a, has not run. On the other hand, there may well be situations where the prospect of enforcing the father's support obligation is so insubstantial that the statutory purpose cannot constitutionally override the mother's privacy right. If,

[2] In this connection, I agree with the Court that in considering plaintiffs' equal protection claim, *i.e.*, whether this legislative purpose is rationally advanced by the legislative classification, the statute should be viewed as creating a classification of mothers of illegitimate children who receive welfare. Though the statute purports to require disclosure of the father's identity not only to the welfare commissioner in the case of welfare beneficiaries, but also to guardians and guardians *ad litem*, I disagree with the Court's alternative contention that the statute thereby applies to all mothers of illegitimate children. Plainly the statute does not in terms specify that all mothers of illegitimate children must disclose the father's identity. Instead it specifies three officials empowered to compel disclosure. The statute would be comprehensive only if all illegitimate children whose mothers are not receiving welfare had guardians or guardians *ad litem* appointed for them. Guardians *ad litem* appear on the scene only with respect to certain kinds of litigation, and guardians are designated by the probate court principally in the event of a finding of the mother's abandonment or neglect. Conn. Gen. Stat. § 45-43. Sec. 45-48 also provides for appointment of a guardian where the probate court finds that removal of the parent as guardian is "for the best interests of the child," but the state had not called our attention to any instance where a probate court has construed the statute as permitting the mother's failure to bring a paternity action to be sufficient justification for removing her as guardian.

for example, the statute of limitations for paternity actions has run, it is difficult to see what legitimate interest is served by enforced disclosure. There may also be situations where the mother has disclosed the father's identity but is reluctant to strain family relationships by bringing a paternity action. Since the welfare commissioner has authority to prosecute the paternity suit, the state's interest in compelling the mother to sue might well be insufficient to justify impairment of the constitutionally protected interest she has in making decisions to maintain the harmony of her family unit. See *Haley* v. *Troy*, 338 F. Supp. 794, 804 (D. Mass. 1972).

148 We need not decide how the constitutional balance should be struck in the variety of factual situations that will come before the state circuit court judges charged with the responsibility for adjudicating contempt citations under this statute. The Court recognizes in footnote 14 of Chief Judge Blumenfeld's opinion that the statute accords the state judges ample discretion to determine the appropriateness of contempt remedies in specific cases. I simply wish to make clear that in exercising their discretion the state judges will have to adjudicate the Fourteenth Amendment question of whether the state interest sought to be advanced outweighs the mother's constitutionally protected interest in privacy in sexual and child rearing matters,[3] and they may well be obligated to conclude that application of the statute in some circumstances would be unconstitutional.[4]

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[3] In some instances privacy rights of the child might be implicated that are not identical with the mother's, in which case a guardian *ad litem* might be needed to be sure the constitutional issue is properly developed for decision.

150 [4] Procedural problems may well be encountered in developing a record to determine whether in a particular case the substantiality of the state's interest in enforcing the father's obligation outweighs the mother's privacy interest. In some cases it may be difficult to assess the state interest unless the identity of the father is known. Perhaps *in camera* proceedings can be employed in such instances. Sometimes it may be possible to persuade the trier of fact that the paternity suit statute of limitations has run without any disclosure of the father's name, as where third party testimony demonstrates that the father (or any male) has contributed no support for more than three years.

151 United States District Court
for the District of Connecticut

Civil No. 15,579

DONNA DOE, LINDA LOE, RENA ROE, SALLY SMITH AND ALL OTHERS SIMILARLY SITUATED

v.

NICHOLAS NORTON, INDIVIDUALLY AND AS COMMISSIONER OF WELFARE OF THE STATE OF CONNECTICUT

Civil No. 15,589

SHARON ROE AND DOROTHY POE, INDIVIDUALLY AND ON BEHALF OF OTHERS SIMILARLY SITUATED

v.

NICHOLAS NORTON, INDIVIDUALLY AND AS COMMISSIONER OF WELFARE OF THE STATE OF CONNECTICUT

Judgment

The above-entitled actions having come on for hearing on the merits before a three-judge district court, convened pursuant to 28 U.S.C. §§ 2281 and 2284,

And the Court having filed its Memorandum of Decision, Findings of Fact and Conclusions of Law under date of September 5, 1973,

It is ORDERED and ADJUDGED that the application for a permanent injunction be and is hereby denied and that these actions be and are hereby dismissed.

Dated at New Haven, Connecticut, this 7th day of September, 1973.

SYLVESTER A. MARKOWSKI,
Clerk, United States District Court.

By ——— ———, *Deputy In Charge.*

152 Supreme Court of the United States

No. 73–6033

SHARON ROE, ET AL., APPELLANTS

v.

NICHOLAS NORTON, ETC.

ON CONSIDERATION of the motion of the appellants for leave to proceed herein in forma pauperis,

IT IS ORDERED By this Court that the said motion be, and the same is hereby, granted.

February 19, 1974.

153 Supreme Court of the United States

No. 73–6033

SHARON ROE, ET AL., APPELLANTS

v.

NICHOLAS NORTON, ETC.

APPEAL from the United States District Court for the District of Connecticut.

The statement of jurisdiction in this cause having been submitted and considered by the Court, probable jurisdiction is noted.

February 19, 1974.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-6033

SHARON ROE *et al*

vs.

NICHOLAS NORTON

On Appeal from the United States District Court for the District of Connecticut

MOTION TO DISMISS OR TO AFFIRM AND BRIEF IN SUPPORT THEREOF

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

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SHARON ROE *et al.*

vs.

NICHOLAS NORTON

On Appeal from the United States District Court
For the District of Connecticut

MOTION TO DISMISS OR AFFIRM

Appellee moves the Court to dismiss the appeal herein on the ground that no substantial Federal Question is presented by the Appeal, or to affirm the judgment sought to be reviewed on the appeal on the ground that it is manifest that the questions on which the decision of this cause depends are so insubstantial as not to need further argument.

Respectfully submitted,

JAMES M. HIGGINS
Assistant Attorney General

Counsel for Appellee

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I. CONNECTICUT GENERAL STATUTES SECTION 52-440B (1971) CREATES A LEGITIMATE AND PERMISSIBLE METHOD OF COMMENCING TO ESTABLISH THE PATERNITY OF AN ILLEGITIMATE CHILD IN SUCH CASES WHEREIN THE MOTHER REFUSED TO DISCLOSE THE NAME OF THE PUTATIVE FATHER.

The legal obligation of a man to support his child born to an unwed mother is one of such a fundamental nature that it remains uncontested in this appeal. The very simple, basic problem that confronted Connecticut and the other states in the handling of some of the cases involving this uncontested obligation was that you cannot enforce the obligation unless the identity of the putative father is disclosed by the mother.

The basic historical background of the statute under scrutiny on this appeal is amply set forth in the opinion of the court below (Appellant's Appendix A commencing at page 10). As pointed out therein, prior attempts to handle this problem were unsuccessful because it was held that actions influencing decisions of welfare eligibility to compel disclosure of the identity of the putative father, in effect, added an additional condition of eligibility not provided for in the Social Security Act provisions setting up the AFDC program. *Doe v. Shapiro* 302 F. Supp. 761, 762 N.3 (D. Conn. 1969), *Appeal dismissed* 396 U.S. 488, *Rehearing denied* 397 U.S. 970 (1970); *Doe v. Harder* 310 F. Supp. 302 (D. Conn.), *Appeal dismissed for want of jurisdiction* 399 U.S. 902 (1970). This statute under question herein does not deny welfare benefits to any otherwise eligible applicant. Connecticut General Statutes Section 52-440(B) is part and parcel of the laws applying to paternity actions in Connecticut and its provisions apply with equal force to all mothers of illegitimate children who refuse to disclose the names of the fathers of their children.

In addition, as stated by the trial court, this statute presents no such direct and positive conflict with the federal statute as to directly impinge upon a specific provision of the Social Security Act. (Appellant's Appendix A, p. 14)

II. CONNECTICUT GENERAL STATUTES SECTION 52-440(B) ALONE AND AS PART OF A COMPREHENSIVE LEGISLATIVE SCHEME IS RATIONALLY RELATED TO A LEGITIMATE STATE END AND THE MEANS EMPLOYED ARE RATIONALLY RELATED TO THE PURSUIT OF THAT END.

The State of Connecticut has continued to show an increasingly concerned awareness of the necessity to make provisions for the protection of the rights of children.

Connecticut law provides for a three-year statute of limitations for paternity actions to the extent that no such paternity petition shall be brought after three years from the birth of such child, or after three years from the cessation of contribution toward support of the child by the putative father, whichever is later. Connecticut General Statutes Section 52-435a (1967). Further, to solve the problem of children whose illegitimacy only becomes certain by their exclusion as issue of a marriage ending in a divorce judgment, in 1971 Connecticut legislature provided an additional period of one year during which time the child or his representative could institute proceedings to establish his paternity. This provided relief for the child born to a married woman during coverture who was in effect declared illegitimate during subsequent divorce proceedings, Connecticut General Statutes Section 46-26b (1971). This statute also provides for legal representation for children in domestic litigation.

The mother and the putative father are also protected by very broad form criminal prosecution immunity provisions Connecticut General Statutes Section 52-435(a)(b) (1971).

The legitimate state purpose or end sought to be served by this statute is that of the enforcement of the parental obligation to support the child. This operation to enforce parental support is a multi-pronged one in the State of Connecticut and involves the support of all children, legitimate and illegitimate. It involves child support as it may be ordered in divorce litigation, Connecticut General Statutes Section 46-26 (1967); children in humane institutions Connecticut General Statutes Section 17-295; children who are poor and unable to support themselves, Connecticut General Statutes Section 17-320; court proceedings to enforce support Connecticut General Statutes Section 17-324; reimbursement by parents for state child support, Connecticut General Statutes Section 17-83E (1969); claim of the State upon death of a beneficiary or parent of beneficiary Connecticut General Statutes Section 17-83G. (1969). As can be seen from the foregoing, the state has evidenced a great interest in and provided for many ways in which to enforce the parental obligation to support children, both by proceedings to enforce current support, and to be reimbursed for prior support afforded to needy children.

The provision of the Connecticut law that is the subject of this appeal is but one of many provisions that exist to enforce this uncontested liability to support minor children.

Also, it ought to be pointed out that perhaps most mothers of illegitimate children will voluntarily undertake to protect their children's right to support.

III. (A) EQUAL PROTECTION IS NOT VIOLATED BY THIS STATUTE.

The Supreme Court has, through the years established a two-pronged test to determine whether a given law meets the due process requirement. As the Court discussed this test in *Eisenstadt v. Baird,* 405 U.S. 438, ft.nt. 7 359 (1972):

> "Of course, if we were to conclude that the Mass. statute impinges upon fundamental freedoms under Griswold, the statutory classification would have to be not merely *rationally related* to a valid public purpose but *necessary* to the achievement of a *compelling* state interest." See also the opinion of the Court below. (p. 25 ff. Appellant's Exhibit A)

As indicated above and in the opinion of the Court below at p. 24 the right to privacy urged by the Plaintiffs in this case is not "fundamental" in any sense that should re-

quire Constitutional protection. However, even if it could conceivably be considered fundamental, it is submitted that the interests represented by the state in this case — those of the illegitimate child to support by his father and those of the public in promoting and protecting the relationship and duties of parent and child as well as to reimbursement from legally liable relatives for monies expended to support the child are sufficiently compelling to justify state intervention in this instance. If an unborn fetus at any time can be said to have a right which is so compelling as to outweigh its mother's fundamental right to determine whether she will or will not bear a child, *Roe v. Wade*, 410 U.S. 113; 35 L. Ed. 2d 147 (1973); rehearing den. 35 L.Ed2d 694 (1973), p. 183 then it must be admitted that the right of a child which has already been born to support from its parent can hardly be considered to be less than compelling. This right becomes even more compelling when it is recalled that there is a three-year statute of limitations for paternity actions in Connecticut, Connecticut General Statutes Section 52-435a, and beyond this point the child cannot sue his father for support if his mother has not done so for him.

As to the Plaintiffs' argument that this law is based upon a discriminatory classification the answer is clear. Illegitimate children are not discriminated *against* by this statute. Rather the state by attempting to establish their paternity is trying to place them upon an equal footing with legitimate children and prevent their mothers from denying them the benefit of support by their fathers. As Judge Blumenfeld points out on p. 27 (Appellant's Appendix A) ". . . if the legislature were to enact a law protecting the 'right' of unwed mothers to exclude their children from the benefit of paternal support, it would be struck down" on the basis of *Gomez v. Perez* 409 U.S. 535, 35 L.Ed.2d 56, 60 (1973) which states:

> ". . . a State may not invidiously discriminate against illegitimate children by denying them substantial benefits accorded children generally. We therefore hold that once a State posits a judidically enforceable right on behalf of children to needed support from their natural fathers there is no constitutionally sufficient justification for denying such an essential right to a child simply because her natural father has not married her mother."

Further, there is no discrimination against plaintiff mothers as a class based upon the fact that they are unwed mothers who are receiving welfare because the statute requires all mothers of illegitimate children to disclose the names of the putative fathers of these children whether or not the mothers are receiving public assistance. Whether or not private guardians ad litem would be less diligent in starting proceedings under this law than the welfare commissioner (and nothing has been advanced to show that they would be) can hardly be argued to bring the statute afoul of the equal protection clause. (See Appellant's Appendix A pp. 31-33)

Finally, the statute is rationally related to a valid public purpose. It is obvious on the face of the statute that it is intended to enforce the obligations of fathers to support their children which has long been considered one of the prime duties of civilized man. The State of Connecticut holds parents primarily responsible for the support of their offspring whether legitimate or illegitimate and with the State's right to do this the Plaintiffs have indicated no disagreement. The statute at issue is simply a means of enforcing this obligation on the part of fathers of illegitimate children and, in particular, in the case of these Plaintiffs and others like them receiving public assistance to recover from the fathers amounts spent out of the public coffers for the support of their children in the past and for future recurring support.

The Plaintiffs also advance an argument that the Act does not permit the finding or imprisonment of persons such as the Plaintiffs in an effort to attempt to find sources of support for those on AFDC. As has already been clearly shown a state may not require assistance in obtaining support from a putative father as an *eligibility* requirement for receiving AFDC. This Connecticut does not attempt to do by its statute; rather this is an effort to comply with 42 U.S.C. Sections 602 (a)(17)(A) (i) and (ii) by trying to establish the paternity of illegitimate children and obtain support for them. Under this law the children whose protection is the prime

consideration of AFDC, *King v. Smith* 392 U.S. 309,325 (1968), continue to receive aid. The only sanctions permissible may be imposed against the mother through the ages-old concept of contempt. There can be little doubt at this late date that the government has the power to compel persons to testify through such means, *Kastigar v. U.S.* 406 U.S. 441,443 (1972). (See the discussion of Judge Blumenfeld on this point at p. 35 ff., Appellant's Appendix A)

Thus, as was found by the Court below, there appears little doubt that the interests advanced by Plaintiffs here are not fundamental so as to be of the type entitled to fit within the constitutionally protected zone of privacy. Further, since this is so, no "compelling" state interest is required to offset the claimed interests of Plaintiffs and the interests advanced by the State of Connecticut — those of the Plaintiffs' minor illegitimate children and of the People of the State of Connecticut generally constitute a valid articulated public purpose which will be rationally implemented by the statute in question.

III. (B) DUE PROCESS IS NOT VIOLATED BY THIS STATUTE

The plaintiffs base their claim that the statute violates due process upon the fact that the law does not mandate a hearing in each individual case as to whether revealing the name of the father will have such adverse effects upon the Plaintiffs and their relationships that this adverse effect will outweigh all the quite obvious benefits which the statute would provide. The rejection of a similar argument in *Wyatt v. United States*, 362 U.S. 525,530 (1960) seems to indicate that due process would not require a hearing on this issue in every case concerning the statute presently at issue and at p. 16a in footnote 14 of his opinion Judge Blumenthal so holds in the instant case.

As Judge Blumenfeld notes at p. 16a the very use of the word "may" by the legislature obviously leaves room for judicial discretion in applying sanctions against the woman who refuses to name the father of her illegitimate child. This wording contrasts strongly with that which the Connecticut

Legislature uses ("shall") when no such liberty is to be left to a judge in determining whether to apply a given penalty.

The Court in its decision below likewise makes short shrift at p. 17 of the Plaintiffs' argument that the statute creates an unconstitutionally irrebutable presumption that the mother's naming the father of her child is in the child's best interest. As was stated above the simple fact that the law is worded so that the finding of the mother in contempt and the resultant fine or imprisonment are *permitted* to be imposed rather than mandated would seem to indicate that there is nothing irrebutable involved. However, as Judge Blumenfeld clearly indicates the concept of "irrebutable presumption" is normally concerned with an issue of fact; the decision of the Connecticut Legislature that all fathers and mothers, whether of legitimate or illegitimate children, should support those children is a value judgment in an area in which the Legislature is surely competent to act.

III. (C) CONSTITUTIONAL RIGHT TO PRIVACY IS NOT VIOLATED BY THIS STATUTE

As the Court stated in *Roe v. Wade* Supra, 176-177 (1973):

> "The Constitution does not explicitly mention any right of privacy. In a line of decisions, however, . . . the Court has recognized that a right of personal privacy, or a guarantee of certain areas or zones of privacy, does exist under the Constitution. . . . *only personal rights that can be deemed 'fundamental' or 'implicit in the concept of ordered liberty,' Palko v. Conn. 302 U.S. 319,325 (1937), are included in this guarantee of personal privacy.* They also make it clear that the right has some extension to activities relating to marriage, *Loving v. Virginia*, 388 U.S. 1, 12 (1967), procreation *Skinner v. Oklahoma*, 316 U.S. 535, 541-542 (1942), contraception, *Eisenstadt v. Baird* 405 U.S. 438, 453-454 (1972), family relationships, *Prince v. Massachusetts* 321 U.S. 158, 166 (1944) and child rearing and education, *Pierce v. Society of Sisters* 268 U.S. 510, 535 (1925), *Meyer v. Nebraska* 262 U.S. 390, 399 (1923)" (Emphasis added)

However, to say that the right to privacy "has some extension to activities relating to" marriage, procreation, contraception, family relationships, and child rearing and education does not mean and cannot fairly be construed to mean, as the Plaintiffs in this case would have us believe, that every activity which could conceivably be related to any of the aforementioned areas is automatically entitled to be included in that zone of privacy protected under the Constitution. A closer look at the cases cited by the Court in *Roe v. Wade,* supra, and those mentioned in the Plaintiffs' brief show clearly the type of rights that may be considered so "fundamental" as to be guaranteed under the Constitution.

The right to determine what individual shall be one's marriage partner is protected and may not be restricted because of race *Loving v. Virginia* 388 U.S. 1, 12 (1967). Also the right to determine whether one will or will not bear children through the use of birth control has been protected in *Griswold v. Connecticut* 381 U.S. 479 (1965). On the other hand the right to determine whether one will or will not bear children through the use of abortion has been held to be not an absolute constitutional right and the States may impose certain restrictions upon it such as requiring that the woman's physician "in his best clinical judgment" recommend it as necessary or, after the first trimester, requiring that an abortion be done in a properly equipped facility by a licensed operative, and, in the final trimester of pregnancy the state may entirely prohibit an abortion. *Doe v. Bolton* 410 U.S. 179, 35 L.Ed 2d, 201, 211, 216-217 (1973), *Roe v. Wade* 410 U.S. 113 & 179, 35 L.Ed. 2d 147, 182-183 (1973). Mention of this point is made to show that even in the most private of the constitutionally protected zones of privacy the Court has not held that state regulation has absolutely no place. For example, probably very few people would attempt to read the Court's opinion in *Loving v. Virginia,* supra, as automatically rendering unconstitutional all state statutes against incestuous marriages, yet such laws do limit the freedom an individual has in determining whom he will marry.

Other cases make it quite clear that there has long been a process of weighing and balancing the interests which the state is trying to protect against those of the individual claiming a right to privacy and that often a compromise between these two competing interests has been struck as in *Roe v. Wade,* supra. Even where fundamental rights are concerned the state has been permitted to regulate when this is necessary for the individual's own person — as regulations involving the mother's health in the second trimester of pregnancy where an abortion is involved or where the opposing rights of another individual may be involved as those of the fetus in the last month of pregnancy where the same abortion is involved.

In *Prince v. Mass.* 321 U.S. 158, 170 (1944) the Court upheld a Massachusetts law which forbade children below certain ages to sell or offer for sale any magazines or other articles or pursue any other trade upon the public streets despite the contentions of the child and her guardian who were involved that this interfered with their religious freedom. (They were Jehovah's Witnesses and claimed that they were required by God as part of their religion to sell religious magazines on the streets.) Even under the later modification of Prince in *Sherbert v. Verner* 374 U.S. 398, 402-403 (1963) the Court made it clear that when there is a substantial threat to public safety, peace or order the states may regulate acts of individuals even though those actions are required by one's religion. Although the doctrine of Prince may be said to have been limited in its future application by later decisions it can in no sense be said to have been overruled. This is made clear in *Wisconsin v. Yoder* 406 U.S. 205 (1972) where at p. 219-220 the Court states:

> "But our decisions have rejected the idea that religiously grounded conduct is always outside the protection of the Free Exercise Clause. It is true that the activities of individuals even when religiously based are often subject to regulation by the States in the exercise of their undoubted power to promote health, safety and general welfare, . . ."

In *Wisconsin v. Yoder,* ibid., the Court struck down the convictions of Amish parents for failing to send their children to any formal school for secondary education until they reached age sixteen as required by Wisconsin law. In so doing the Court declared at p. 214:

> "It follows that in order for Wisconsin to compel school attendance beyond the eighth grade against a claim that such attendance interferes with the practice of a legitimate religious belief, it must appear either that the State does not deny the free exercise of religious belief by its requirement, or that there is a state interest of sufficient magnitude to override the interest claiming protection under the Free Exercise Clause."

In holding that the law interfered with the free exercise of freedom of the Amish the Court took note of the alternate informal vocational training which the Amish provided their children after their graduation from the eighth grade which had been termed by an education expert to be virtually perfect training for life in the Amish community and went on to say that the Wisconsin rule was constitutional as applied to the general population and that the decision in *Yoder* should not be construed to permit the setting up of any type of training program by any group as an alternate to state accredited education systems. An exemption was made for the Amish basically for religious reasons and because they had shown, as very few other groups could, the viability and effectiveness of their way of life and training as a group for over 200 years. *Wisconsin v. Yoder*, ibid., p. 235-236. The Court in addition at p. 230 found that permitting the Amish to continue in their traditional ways of training children would not cause "any harm to the physical or mental health of the child or to the public safety, peace, order or welfare. . ." This obviously places the present case where no claims of interference or religion are made well beyond the *Yoder* decision. Also a determination that a child is not to receive support from his father or possibly even know who his natural father is can obviously work to the harm of the child who may thus be denied physical, emotional and educational advantages which that father may be able to offer him not to mention the psychological damage which may be done to a child who is required to go through life without knowing who his father is or that his father does support him, albeit possible under legal compulsion. And this is to leave out of the discussion the interest which the general public has in having an ordered society in which fathers are required to support their children for the good of the children as well

as to relieve the public of the expense of supporting that child.

In *Meyer v. Nebraska* 262 U.S. 390, 400-401 (1923) the Court at p. 403 struck down as "arbitrary and without reasonable relation to any end within the competency of the state" a state law which, as construed by Nebraska courts, prohibited the teaching of "modern" foreign languages but not the teaching of "ancient" languages such as Latin or Greek to children who had not passed the eighth grade in order to inculcate English and American ideals in children before they learned foreign tongues and ideals and to restrict the amount of studies young children could take in the interests of their health.

Pierce v. Society of Sisters 268 U.S. 510 (1925) involved the Oregon Compulsory School Act which required all children between 8 and 16 years old to attend only public schools. This law was challenged by private schools as being unconstitutional in that it deprived them of property without due process of law and interfered with the right of parents to choose the schools in which their children were to be educated and the challenge was upheld.

It should be noted that in neither *Pierce* nor *Meyer* was the basic premise that the state could require that children receive a certain amount of education at qualified schools challenged. In *Yoder* such a challenge was upheld for religious reasons and then only for the Amish who were providing a type of alternate education. And in none of these cases was an interest of great substance opposed as it is here where both the illegitimate children and society as a whole have a great deal at stake.

Skinner v. Oklahoma 316 U.S. 535, 542 (1942) which held unconstitutional an Oklahoma statute which, for example, permitted one who had three times been convicted of stealing over $20.00 from a stranger to be named a "habitual criminal" and sterilized without his consent while one who had been thrice convicted of embezzling over $20.00 and was subject to the same jail sentences as the robber could not be declared a "habitual criminal" and sterilized without his consent; *Stanley v. Illinois* 405 U.S. 645, 658

(1972) which struck down as unconstitutional a state law which provided for a hearing before children could be removed from the care of their married parents or mother in the case of illegitimate children but for no hearing before removing illegitimate children from the custody of their natural father; and *Eisenstadt v. Baird* 405 U.S. 438, 454-455 (1972) which declared unconstitutional a Massachusetts statute which permitted the dissemination of birth control devices to married persons but not to single persons are all cases which were basically decided on the basis of the Equal Protection Clause. However, in these cases the rights involved were again those which could be ranked as fundamental — the right to be able to have children; the right to choose not to have children if one desires; and the right of putative fathers to support and care for their natural children.

In the present case Plaintiffs quite simply do not present any fundamental right which requires that their privacy should be constitutionally protected. The right to keep secret the name of the man with whom a woman has been intimate quite simply does present that same question of fundamental rights brought up by cases protecting one's right to choose a marital partner, to be able to have children or to determine when one will have children. Furthermore, even if this case could be considered to present a question of such fundamental rights to privacy the interests of the child to the support and knowledge of its natural father and of society to have children supported by their parents certainly are such as to justify the intervention of the state in this situation. (See pp. 23-24 Appellant's Appendix A)

There remain several cases relied upon by the Plaintiffs in this regard which have not been discussed. In *Haley v. Troy* 338 F.Supp. 794 (D. Mass., 1972) the Court held that there was a denial of due process where the same judge who required women to swear out nonsupport complaints against their husbands or the fathers of their children later heard the case. In passing, the Court commented at p. 804 that such a practice might violate the right to privacy without explaining exactly how this right might have been violated and then went on to state:

> "But these rights were not asserted by the plaintiffs and the court does not undertake to decide them."

As the Plaintiffs state in *Meyers v. Juras* 327 F. Supp. 759 (D. Ore. 1971) aff'd. 404 U.S. 803 (1972) the court simply held that Oregon could not impose as an eligibility requirement for AFDC any additional requirements such as assistance in gaining support from legally responsible relatives when this is not part of the federal AFDC eligibility requirements. However, the court at p. 762 clearly holds that other sanctions may be imposed to obtain assistance in gaining support from those legally liable.

A reading of *Roe v. Wade*, supra., and *Doe v. Bolton*, supra., does not bear up the Plaintiffs' contentions that they place the doctor-patient relationship within the zone of constitutionally protected privacy and without a citation to a specific page or the benefit of further analysis by the Plaintiffs it is impossible to discuss this argument further. Similarly, it remains rather a mystery as to why they place reliance upon *May v. Anderson* 345 U.S. 528 (1955) which basically deals with a conflict of laws in determining which state courts have jurisdiction to determine an award of custody of children of a divorced couple. And the *Shapiro v. Thompson* 394 U.S. 618, 613, 617 (1969) case held unconstitutional state requirements that applicants for welfare reside within the state for one year before they could be considered for public assistance as it chilled interstate travel and unfairly discriminated against those who had recently moved into the State as opposed to long-time state residents; again this case does not seem to offer much support to the Plaintiffs' claims.

Finally, as amply discussed by Judge Blumenfeld (p. 17 ff. Appellant's Appendix A) the power of the state to compel people to testify has long been established and is constitutionally limited only by the fifth amendment's privilege against self-incrimination. And the State has in this instance protected those testifying by the enactment of Public Act 439 Section 1 (1971) amending Connecticut General Statutes Section 52-435c and Public Act 439 Section 2 (1971) amending Connecticut General Statutes Section 52-435(b). (See Appellant's Exhibit A at pp. 19-20).

As Judge Blumenfeld discusses at pp. 19-20, ibid, privilege such as the marital privilege is granted by the legislature of the state and is not a constitutional right. It can hardly be considered to be a fundamental right even if it could be applied to the relationship between the unmarried mother and father of an illegitimate child. And, furthermore, the "invasion of privacy" alleged to occur under the law under question does not even involve so much as a visit to the home or affect any participation in decisions among those affected. Such an intrusion into the home was upheld as reasonable in *Wyman v. James* 400 U.S. 309 (1971) in order to see that the child who was the object of the AFDC was being benefited by the award, to see that the money was being properly used and to provide first hand information to the social worker. The "intrusion" of Plaintiffs' privacy in this case is far less than that involved in a visit into the home. In addition, by the mere fact of her pregnancy and having her child in her home the fact that an unmarried mother has an illegitimate child has been made known to a certain number of people. And revealing the name of the father to the proper authorities in order to benefit that child is scarcely a much more drastic invasion.

IV. NO SUBSTANTIAL FEDERAL QUESTION IS PRESENTED BY THIS APPEAL.

As pointed out by the Court below (Appellant's Appendix A pp. 5-6) this case really seems to revolve about an opinion expressed by a very few mothers of illegitimate children that they should not have to do anything to establish or protect the rights of their children as they relate to the establishing of the paternity of those children. This narrowly shared opinion, now more narrow than earlier in this litigation since the plaintiffs in the main case, *Donna Doe Et Al v. Nicholas Norton* (D. Conn. Civil No. 15, 579) (1973) moved and were granted permission by the Court below to dismiss their appeal pursuant to Rule 14 (1), comes into conflict with the public policy of the State of Connecticut. And merely because of this conflict of views the appellants attempt to raise up serious constitutional questions. There is no sound basis in law or in the United States Constitution to provide any basis for the claims of the appellants herein.

They lay claim to a constitutionally impermissible classification of "mothers" and "mothers of illegitimate children." Mothers of illegitimate children are the only mothers who are concerned with this problem, and the statute covers all such mothers.

The mere claim of constitutional deprivation and the various different names applied to their really singular difference of opinion do not give rise to any federal question of substance that ought to be further entertained by the United States Supreme Court.

The appellee respectfully requests that this Court grant his Motion to Dismiss this Appeal to affirm the decision of the Court below.

Respectfully submitted,

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Appellee

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Certification of Service

This is to certify that on the 1st day of February 1974, copies of the foregoing Motion to Dismiss or Affirm and Appellee's Brief were deposited in a United States Post Office or mail box, with first class postage prepaid addressed to counsel of record, to wit:

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Supreme Court, U. S.
FILED
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-6033

SHARON ROE and DOROTHY POE, on behalf of themselves and others similarly situated,

Appellants,

v.

NICHOLAS NORTON, individually, as Commissioner of Welfare of the State of Connecticut, and on behalf of others similarly situated,

Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

APPELLANTS' BRIEF

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APPENDIX TO APPELLANTS' BRIEF

Connecticut State Welfare Manual Vol. I, Section P-3460.22

(this section is included in the Single Appendix as Exhibit B to the Complaint, S.A.1, and is therefore not reproduced here).

Connecticut State Welfare Manual Vol. I, Section P-3919 ..... 2a

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-6033

SHARON ROE and DOROTHY POE, on behalf of themselves and others similarly situated,

Appellants,

v.

NICHOLAS NORTON, individually, as Commissioner of Welfare of the State of Connecticut, and on behalf of others similarly situated,

Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

APPELLANTS' BRIEF

OPINIONS BELOW

The opinions of the United States Three Judge District Court are reported at 365 F. Supp. 65 (majority opinion) 84 (concurring opinion). The opinion for the District Court for the District of Connecticut denying preliminary relief in a companion case, *Doe et als v. Norton,* is reported at 356 F. Supp. 202.

JURISDICTION

Appellants brought this action under the Civil Rights Act, 42 U.S.C. Section 1983, jurisdiction being conferred on the District Court by 28 U.S.C. Section 1343(3). In it they sought declaratory and injunctive relief under 28 U.S.C. Section 2201 et seq.

The constitutionality of a state statute being in question, this action was consolidated with *Doe et als. v. Norton* (Civil Action No. 15,579, U.S.D.C., D. Conn.) in which a three judge court had previously been convened under 28 U.S.C. Section 2281 and 2284.

The court below filed its Memorandum of Decision, Findings of Fact and Conclusions of Law on September 5, 1973; Judgment thereon was entered September 7, 1973.

Appellants filed their notice of appeal November 5, 1973. Jurisdiction over this appeal is predicated on 28 U.S.C. Section 1253, see e.g. *Carter v. Stanton* 405 U.S. 669 (1972). On January 4, 1974, Appellants filed their Jurisdictional statement. On February 19, 1974, the Court noted probable jurisdiction and granted Appellants' Motion to Proceed In Forma Pauperis.

QUESTIONS PRESENTED

1. Does Connecticut General Statute Section 52-440b contravene the Social Security Act provisions concerning the purposes of Aid to Families with Dependent Children (AFDC), eligibility for AFDC, confidentiality or protection of individual dignity?[1]

2. Does the statute violate the Equal Protection principle by establishing suspect classifications of

[1] Although this question was not presented in the Jurisdictional Statement, it was decided below and must be decided before reaching the other questions.

illegitimacy and sex, by impinging discriminatorily on a fundamental interest or by classifying people irrationally for recoupment purposes?

3. Does the statute arbitrarily and unnecessarily impinge upon the constitutional right of privacy by denying all mothers of illegitimate children freedom of choice as to whether to attempt to establish their children's paternity and by forcing them to disclose intimate details of their sexual lives in a public forum?

4. Does the statute violate due process by containing an irrebuttable presumption or by overbreadth and lack of standards?

5. Is the statute the least drastic means of promoting a legitimate state policy?

STATUTES INVOLVED

The statute involved, Connecticut General Statute Section 52-440b, provides:

> "(a) If the mother of any child born out of wedlock, or the mother of any child born to any married woman during marriage which child shall be found not to be issue of the marriage terminated by a divorce decree or by decree of any court of competent jurisdiction, fails or refuses to disclose the name of the putative father of such child under oath to the welfare commissioner, if such child is a recipient of public assistance, or to a selectman of a town in which such child resides, if such child is a recipient of general assistance, or otherwise to a guardian or guardian ad litem of such child, such mother may be cited to appear before any judge of the circuit court and compelled to disclose the name of the putative father under oath and to institute an action to establish the paternity of said child.

"(b) Any woman who, having been cited to appear before a judge of the circuit court pursuant to subsection (a), fails to appear or fails to disclose or fails to prosecute a paternity action may be found to be in contempt of said court and may be fined not more than two hundred dollars or imprisoned not more than one year or both."

Other statutes and regulations involved are set forth in the Appendix to this Brief.

STATEMENT OF THE CASE

This action to challenge Connecticut General Statutes (C.G.S.) Section 52-440b on constitutional grounds (and its applicability to welfare recipients on grounds of conflict with the Social Security Act) was brought by complaint filed January 31, 1973 in the United States District Court for the District of Connecticut. At hearing February 26, 1973 on plaintiffs-appellants (hereinafter "appellants") motion to convene a three judge court, the District Court, per Newman, J, ordered it consolidated with a similar case, *Doe et als. v. Norton* (D. Conn. Civil Action No. 15, 579) in which a three judge court had already been ordered convened. All subsequent proceedings in the District Court involved both actions. All plaintiffs have proceeded at all times under pseudonyms in order to protect the privacy they seek to establish in this action.

Under C.G.S. Section 52-440b, refusal by the mother of an illegitimate child to divulge the name of the putative father of her child to an appropriate official authorizes that official to commence an original civil contempt procedure,[2] which may result in up to one

[2] Although nothing in C.G.S. Section 52-440b designates it as "civil", it is the Attorney General's position that that is the case; appellants do not dispute that interpretation; see Stipulations of record, Par. 2. (A. 56)

year imprisonment and a two hundred dollar fine.[3] Under it the appellant class of mothers may be forced 1) to appear in court, 2) to testify as to the name and other identifying information about the putative father,[4] 3) to "institute" a paternity action, and 4) to "prosecute" a paternity action. Under a different statute, C.G.S. 52-440a, the Welfare Department has the power to bring a paternity action in the name of the Commissioner. The mother can be forced to testify at the trial of any paternity action, C.G.S. Section 52-435b and 440a.

Appellants are the classes of mothers and children subject to the statute. This action was originally brought by two mothers on behalf of themselves, their children and the classes represented by each (Complaint, para. 4, Substituted Complaint, para. 4). (A. 5, A. 22)

The District Court, believing that there might be a conflict of interest between appellant mothers and their children, appointed separate counsel to represent any separate interests of the children. Such counsel

[3] While the requirements of Section 52-440b to divulge the father's name and to bring and prosecute paternity actions appear to apply to all mothers of illegitimate children, only in three sub-categories is there any enforcement provision. These are a) State Welfare recipients, b) town welfare recipients, and c) instances in which some competent court has appointed a guardian or guardian ad litem who is not the mother. The District Court construed the statue to apply to all mothers.

[4] While the statute does not in terms refer to identifying information other than name, it does require the mother to "prosecute" a paternity action. Since the Commissioner of Welfare has the power to institute a paternity action if the mother neglects to do so, and other identifying information is necessary for him to do so, the statute has been construed to require divulgence of other identifying information. Transcripts included in Appendix to Children's Brief, *passim*.

appeared and have represented the children as separate parties to the action since that time.

Appellant mothers submitted their pseudonymous affidavits as evidence, by agreement of counsel; Single Appendix (A. 47 and A. 50). They also submitted affidavits from twelve other members of the class of mothers, including the plaintiffs of the companion case; (A. 36-52). Dorothy Poe indicated that she did not wish to prosecute a paternity action because of substantial fears that the pressure of testifying in court might cause her to undergo a nervous breakdown, and because neither she nor her older child had realized any benefit from prosecuting the older child's father even though a judgment of paternity had been obtained; A. 24. Sharon Roe indicated certainty that her child's father would never contribute to her support and a good chance that he would break off his developing relationship with the child if she tried to force him to do so. Ms. Roe had only been a recipient of AFDC benefits a short time and expected to terminate them soon; A. 51.

In the cases of several other members of the class, the mother reasonably feared that the father would cause serious harm to herself and/or the child if she were to prosecute him; A. 37, 41. In one case, the mother had religious scruples against prosecuting a lawsuit; A. 44-5. In other cases, the mothers had declined to divulge the father's name because the statute of limitations had run, so that the fathers already had a good defense to a paternity action under the statute; C.G.S. Section 52-435a; A. 38, 52. In several cases, the mother and child were fully protected because the mother had in her possession a signed acknowledgment of paternity, which could form the basis of a later support order under C.G.S. Section 52-442a; A. 39, 40, 46-7. In two cases, the mother was not herself certain of the father's identity; A. 45, 49. In

all of the cases the mothers had made an informed choice that the chances of detriment to themselves and/or to their children were greater than the chances of gain.

Some of the mothers, notably the two named Appellants, also stated their firm belief that the decisions in these areas should be theirs alone.

Counsel for the children deposed Dr. Albert Solnit, director of the Yale Child Study Center and co-author of the recent book *Beyond the Best Interests of the Child* with Anna Freud and Joseph Goldstein. They also deposed three Welfare Department officials: Caroline Packard, Joseph Mancini, and Joseph Nadolski, and submitted an affidavit from Dr. Edward Zigler, former head of the office of Child Development at the Department of Health, Education and Welfare. Both experts took the position that the interests of the illegitimate children, especially their psychological interests were in the general case, not advanced and might well be harmed by the statute. Ms. Packard testified that Section 52-440b and the policies implementing it had been submitted to the Department of Health, Education and Welfare, that the Welfare Department exercised little discretion in determining whether to refer a case of refusal to comply to local private counsel to bring petitions under the statute, and that counsel were paid on a per case basis; (A. 72-92) Mr. Nadolski and Mr. Mancini described the local practice in the District offices in which they worked. Both were members of the resources staff, not the social work staff; A. 93-124.

The Defendant offered no legislative history or evidence, except some statistics concerning the incidence of illegitimacy; A. 56-61. There was no evidence of utilization of the statute by other members of the defendant class: town welfare officials, guardians or guardians ad litem. At hearing, counsel for defendant admitted that he did not know whether the statute had

ever been utilized by any of the parties given statutory enforcement powers other than the named defendant.

Hearing on the merits was held April 30, 1973 before Timbers, Circuit Judge, and Blumenfeld and Newman, District Judges. Both parties filed late submissions concerning subsequent regulations issued by the Department of Health, Education and Welfare. On September 5, 1973 the Court, per Blumenfeld, J, filed its Memorandum of Decision, Findings of Fact and Conclusions of Law denying appellants' applications for declaratory and injunctive relief, and dismissing the case. The majority opinion found that there was no direct conflict between Section 52-440b and the Social Security Act, distinguishing *Meyers v. Juras* 404 U.S. 803 on the basis of the decision in *New York State Dept. of Soc. Servs. v. Dublino* 413 U.S. 405. It held that the constitutional right of privacy incorporated no privilege against testimony except in situations where the Fifth Amendment was applicable, and that the statute did not violate Equal Protection or Due Process. It denied plaintiffs' other claims, including their claim that the statute denied them their constitutional right to determine their children's upbringing, summarily and without authority. Judge Newman filed a separate opinion, concurring. He however, felt that there was a possible violation of the privacy right in some cases cognizable under the statute and concurred because he thought the statute not unconstitutional on its face. None of the judges addressed the applicability of Section 52-440b to the specific cases before them. On September 7, 1973, the District Court entered judgment accordingly.

This appeal followed. On January 4, 1974, appellants filed their jurisdictional statement, following Notice of Appeal filed November 5, 1973. Appellees filed a motion to dismiss or affirm. On February 19, 1974 this Court noted probable jurisdiction.

SUMMARY OF ARGUMENT

The purpose of the statute is unclear, but even if there were a "legitimate" purpose, the regulation is too broad and operates by means which stifle fundamental liberties; *Shelton v. Tucker* 364 U.S. 479. Appellants do not claim that their right as parents, to control their family destiny is absolute, but rather that the statute is substantively and procedurally unconstitutional. The mothers delineate three conceivable purposes for the statute: 1) recoupment of state AFDC benefits; 2) protection of children's interests and 3) punishment of mothers. They then note the different analyses necessary to determine whether the statute is valid depending on the purpose selected.

I. First, the statute violates the Social Security Act. Since it applies specifically to AFDC mothers and is administered through the AFDC program, it must comply with the Act in order to survive a challenge based on the supremacy clause; *King v. Smith* 392 U.S. 309.

The statute is fatally inconsistent with the Social Security Act in at least four ways: 1) In removing the mother's power to decide questions for her family on a wholesale basis and in its sanctions, Section 52-440b violates the purpose of AFDC; *King v. Smith*, supra. 2) In deterring applications for benefits it is an additional condition of eligibility inconsistent with federally mandated standards; *Townsend v. Swank* 404 U.S. 282. The statute is nothing more than an attempt to get around the injunctions against requiring mothers of illegitimate children to disclose the father's name as a condition of eligibility for AFDC; *Juras v. Meyers* 404 U.S. 803, aff'g 327 F. Supp. 759; *Doe v. Shapiro* 302 F. Supp. 761 (D. Conn. 1969). app. dismissed 396 U.S. 488. 3) In subjecting the mothers to a public courtroom hearing of private information, the statute violates the Act's confidentiality requirement; 42

U.S.C. 602(a)(9). 4) The statute is no more authorized by NOLEO than were the regulations struck down in *Juras v. Meyers*, supra. and *Doe v. Shapiro*, supra. *Townsend v. Swank*, supra., not *New York Dep't of Soc. Servs. v. Dublino* 413 U.S. 405, is applicable to this statute. The recent H.E.W. regulations purporting to authorize termination of the mother from assistance even if they were valid, are irrelevant to this case, where the sanctions are jail and a fine; *Shirley v. Lavine* 365 F. Supp. 818 (N.D.N.Y. 1973) app. pending; *Juras v. Meyers*, supra.

II. The statute also violates equal protection. It penalizes mothers and children drawing on what should be seen as a suspect classification, illegitimacy; *Weber v. Aetna Cas. and Sur. Co.* 406 U.S. 164. Its categories are neither the best possible nor supportive of any legitimate state purpose. And it impinges on a fundamental interest without embodying classifications fitted to such a legitimate purpose; *Eisenstadt v. Baird* 405 U.S. 438; *Shapiro v. Thompson* 394 U.S. 618. Furthermore, it fails to vindicate an operation solely against mothers, thereby discriminating on the basis of sex; *Reed v. Reed* 404 U.S. 71. Nor are the categories set up procedurally or substantively, rationally related to what otherwise appears to be the more likely purpose of the statute: recoupment; *Rinaldi v. Yeager* 384 U.S. 305; *James v. Strange* 407 U.S. 128. Finally the classifications are irrational as measured against other purposes, suggesting that the real purpose of the statute is punitive; *James v. Strange*, supra, *U.S. Department of Agriculture v. Moreno* 413 U.S. 528.

III. The mothers also submit that Section 52-440b violates their liberty as guaranteed by the Fourteenth Amendment under the constitutional "zone of privacy"; *Griswold v. Connecticut* 381 U.S. 479; *Pierce v. Society of Sisters* 268 U.S. 510; *Stanley v. Illinois* 405 U.S. 645. Specifically, the statute compels them to testify in a proceeding which does not advance any compelling

state interest, about the details of their otherwise private sexual lives; *Griswold*, supra., removes their right to decide important questions of family policy; *Pierce v. Society of Sisters*, supra., and forces them to "institute" and "prosecute" lawsuits whether they want to or conceive it in the best interests of all involved; *West Virginia Board of Education v. Barnette* 319 U.S. 624, all without advancing any compelling interest of the state or any other party. The procedures utilized further violate due process in their irrebuttable presumption as to the child's interests; *Stanley v. Illinois*, supra., overbreadth; *Roe v. Wade* 410 U.S. 113, and lack of statutory standards; *Giaccio v. Pennsylvania* 382 U.S. 397. Finally the statute is far too sweeping and drastic to be justified by any of its supposed purposes. Thus it violates the mothers' and children's constitutional right to be let alone.

INTRODUCTION

> If a person possesses any tolerable amount of common sense and experience, his own mode of laying out his existence is the best, not because it is the best in itself but because it is his own mode.[5]

Recognizing that some people lack even a "tolerable amount of common sense", appellants do not contend that the State has no right under any circumstances, to require mothers of illegitimate children to divulge the names of the fathers and prosecute paternity actions. But a statute attempting to regulate the behavior of those few persons without any tolerable amount of common sense must define its purpose clearly and be narrowly drawn to protect the constitutional rights of

[5] John Stuart Mill, *On Liberty* (Dolphin Books, Doubleday and Co., Garden City, New York, 1961) 544.

the others. It must have appropriate standards and procedures, treat equally situated parents and children equally, may only use appropriate sanctions, and must not be inconsistent with any applicable federal statute. By all of these criteria, Connecticut General Statutes (*C.G.S.*) Section 52-440b is constitutionally defective:

> Even though the governmental purpose be legitimate and substantial, that purpose cannot be pursued by means which broadly stifle fundamental personal liberties when the end can be more narrowly achieved. *Shelton v. Tucker* 364 U.S. 479, 488 (1960).

The language of Section 52-440b and the evidence on file indicate that it is applied generally rather than to a few cases of particular abuse.[6] Although the statute contains the term "may" which led the District Court to conclude that it would not be applied "woodenly", there are no statutory criteria guiding its application by state courts. The legislative history is obscure: it is not clear what the purpose was intended to be.[7] Whatever

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[6] Stipulation of the parties, (A. 52) para 1. Mancini deposition, *passim.* (A. 93-102), Packard deposition, *passim.* (A. 72-92).

[7] There is no legislative history other than the obvious attempt to avoid the consequences of those decisions which denied states the right to condition eligibility for AFDC benefits on the mother's willingness to name the father; *Doe v. Shapiro* 302 F. Supp. 761, app. dismissed 396 U.S. 488, reh. denied 397 U.S. 970 (and others cited infra pp. 17). Although these cases were concerned with the States' purpose of recouping AFDC benefits paid out, Appellee argued that the statute was intended to protect and advance the interests of illegitimate children. The District Court added to the confusion over the statute's purpose by variously arguing that the statute was an appropriate exercise of the State's right to recoup under NOLEO (42 U.S.C. Section 602(a)(17) and (18), 365 F. Supp. 65, 82, but also advancing the purpose of protection of the children's interest, chiefly if not exclusively their future financial interests, 365 F. Supp. 65, 74-5 n. 14 (Blumenfeld, J) 85 (Newman, J, concurring).

Neither Appellee nor the District Court addressed the conflict between the child's best interests, which in any case are not

its broader purposes, Section 52-440b functions to require mothers of illegitimate children to seek financial support from the father of those children, in practice recoupment to the state for AFDC money expended, by forcing paternity actions upon the mothers regardless of whether any benefits would actually accrue to them or the child or of whether seeking such support would be in the child's best interest.

The confusion of statutory purposes is important because the suggested purposes are not consistent with each other and because they call for different analyses. Appellants submit that a recoupment purpose does not justify Section 52-440b because its classifications are irrationally underinclusive, because such a purpose is not sufficiently compelling to overcome the mother's private right to make financial decisions, a right protected by the Social Security Act as well as the constitutional right of privacy, and because it conflicts directly with several other purposes of the Social

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exclusively financial, and the State's interest in recoupment, an omission which is curious in light of the concern with the much less likely conflict of interest between children and their mothers. Nor did either deal with Appellants' suggestion that the real purpose of the statute is to punish the mothers for bearing children out of wedlock, a purpose which becomes clear because of the irrationality of the statute measured according to the other purposes (See Part III A infra).

Appellee's administrative practices and the decisions of state courts negate the theory that the statute was intended to advance the children's interests. Joseph Mancini, a resource worker (not a children's services worker) testified that both the social worker and he lacked discretion to determine that the child's best interests require not pursuing the issue A. 92-102, and that he doesn't ask mothers why they don't want to pursue the fathers because that is irrelevant *Ibid* A. 109. Mancini concluded: "We convey to her that . . . the only reason we want this gentleman for is to help pay the expenses. . ." A. 117. The only written state court decision constuing the statute finds the state's recoupment interest to be its sole purpose; *Commissioner of Welfare v. Larracuento* CV2-94960 (Henebry, J); and other oral decisions are in accord; see Transcripts included in the Appendix to Children's Brief.

Security Act. Nor does the statute survive if it is designed to advance the interests of all illegitimate children because its classifications and administration are not designed to elicit those interests and it is far from the least drastic means of advancing those interests. And a punitive purpose would clearly violate the Eighth Amendment in addition to falling for all of these reasons.

I.

CONNECTICUT GENERAL STATUTES SECTION 52-440b IS INCONSISTENT WITH THE SOCIAL SECURITY ACT.

Because Section 52-440b specifically applies to mothers and children receiving assistance under the AFDC program, it is invalid under the supremacy clause unless it complies with the Social Security Act; *King v. Smith* 392 U.S. 309 (1968), and valid regulations issued by the Department of Health, Education and Welfare under that act; *Lewis v. Martin* 397 U.S. 552 (1970). To place the statute in proper perspective, it is necessary to sketch the whole scheme of statutes designed to enforce support obligations. Appellants will then show that Section 52-440b contravenes the Social Security Act in several ways.

Connecticut has a special chapter governing bastardy actions, Chapter 911, C.G.S., Sections 52-435 et seq. Chapter 911 provides a statutory cause of action, available on behalf of any child born out of wedlock, including any child born to a married woman whose husband is not the child's father. The primary purpose of bastardy actions is not to protect the child's interests; rather it is to assist the mother in providing support for the child; *Pelak v. Karpa* 146 Conn. 370, 151 A.2d 333 (1959). The other major purpose of the

procedure is to save the public from the burden of supporting the child, *Pelak v. Karpa, supra* at 373. Section 52-440b was added to Chapter 911 in 1971.

The general enforcement procedure for the securing of support for any individual from his or her legally liable relatives, is found in Conn. Gen. Stats. Section 17-320:

> . . . Proceedings to obtain such orders of support shall be instituted by a verified petition with summons and order, in a form approved by the judges of the circuit court, of the husband or wife or any relatives or the conservator of such poor person. Upon the filing of such petition, the judge shall cause a summons, signed by him or by the clerk or assistant clerk of said court, to be issued requiring such relative or relatives to appear in court, at a time and place named, for a hearing upon such petition . . . the circuit court . . . may order such relative or relatives to contribute to such support . . . such sum as said court deems reasonably within each such relative's ability to support such person.

By its terms, Section 17-320 applies without regard to the legitimacy or illegitimacy of the parent-child relationship.

When the issue of child support arises during or following the dissolution of marriage,[8] it is within the jurisdiction of the Superior Court, C.G.S. Section 46-26:

> . . . upon the complaint of either parent . . . made to the Superior Court, or upon motion with order and summons, made to the Superior Court in any case by either parent or by the commissioner of finance and control and subsequent to the granting of a decree of dissolution, it shall inquire into their pecuniary ability and may make and enforce such decree against either or both of them for the

[8]Prior to October 1, 1973, known as divorce. (See P.A. 73-373).

maintenance of such child as it considers just, and may direct security to be given therefor.

Connecticut thus provides adequate statutory tools which can be used by one parent against the other parent in securing financial support for a child, without Section 52-440b. Where it has contributed to the child's support, the relevant administrative agency is empowered to proceed directly against a defaulting parent.

Compliance with statutory eligibility requirements entitles any "dependent" child to support from the state through the Aid to Families with Dependent Children (AFDC) program C.G.S. Section 17-82d. Connecticut does not, despite the availability of Federal reimbursement, provide children with an "unemployed parent" program. (See 42 U.S.C. Section 607). Eligibility for AFDC benefits may be established prior to the child's birth; *Wisdom v. Norton* (D Conn. 1973 Civil Action 15,906). The named appellants are all recipients of assistance under the AFDC program.

Receipt of AFDC benefits changes the parental obligation to support in several ways. First, it obligates the absent parent to the State rather than to the child for such period of time and to such extent as the child is supported by the AFDC benefits. Second, recent cases recognize that it changes the parental obligation from one which is not dischargeable in bankruptcy to one which is so dischargeable, *In re Ashby*. (Bankruptcy NK 266-72B8) (W.D. Mich. 1973).

Third, it brings into play the so-called NOLEO provisions of the Social Security Act, 42 U.S.C. Section 602(a)(17) and (18), which require states to maintain programs to aid the present parent in securing support from the absent parent.

For a number of years prior to 1969 the Connecticut State Welfare Department pursued a policy of requiring any recipient who was the mother and supervising relative of an illegitimate child to divulge the name of

the child's putative father as a condition of the child's eligibility for Aid to Families with Dependent Children (AFDC). This practice was enjoined as violative of the Social Security Act, and unauthorized by the NOLEO provisions, *Doe v. Shapiro* 302 F. Supp. 761, (D. Conn., 1969), appeal dismissed 396 U.S. 488, reh. den'd, 397 U.S. 970 (1970). The Department thereafter attempted to require such divulgence as a condition of the mother's eligibility for AFDC benefits as a supervising relative. This practice also was enjoined, *Doe v. Harder* 310 F. Supp. 302 (1970), appeal dismissed, 399 U.S. 902 (1970). This Court reached the same conclusions in summarily affirming substantially identical decisions from three other Districts, *Meyers v. Juras* 404 U.S. 803, reh. den'd 404 U.S. 961 (1971), *Carleson v. Taylor* 404 U.S. 980 (1972), *Weaver v. Doe* 404 U.S. 987 (1971). Now Connecticut is at it again. After the second *Doe* decision, the Department supported H.B. 6040, now C.G.S. Section 52-440b, which again seeks to compel mothers of illegitimate children to prosecute paternity actions.

The enforcement mechanism, however, has made the law more draconian: now, instead of being terminated from receipt of welfare benefits a mother may be imprisoned and fined and a child deprived of the care of its mother.

In *Pearce v. Harder* (D. Conn. Civil No. 13,747 (1970), the District Court preliminarily enjoined the Connecticut State Welfare Department from requiring the parents of AFDC children to sign nonsupport warrants for a deserting parent's arrest as a condition of eligibility. See also *Doe v. Carleson* 356 F. Supp. 753 (N.D. Calif. 1973), *Doe v. Swoap* (N.D. Calif. 1973 Civil No. 69-666 RFP Peckham, J.). The Connecticut

Welfare Department thereupon abandoned the practice.[9]

Despite the fact that the parent having custody of any child may be the sole available source for information of value to the child in pursuing claims for support, Connecticut has never sought to require the divulgence of such information from the parent of a legitimate child on pain of fine or imprisonment. Nor has it attempted to protect its own fisc by requiring welfare mothers of legitimate children to divulge such information on pain of fine or imprisonment.

A. The statute violates the purpose of AFDC.

The imposition of the penalties of imprisonment, fine, or public disclosure of intimate details of the personal life of a mother who is an AFDC supervising relative, as the plaintiffs are, is inconsistent with the basic purpose and objective of the Social Security Act.

> The AFDC Program was enacted:
> For the purpose of encouraging the care of dependent children in their own homes or in the homes of relatives by enabling each state to furnish financial assistance and rehabilitation and other services. . . . to needy dependent children and the parents or relatives with whom they are living to help maintain and strengthen family life and to help such parents or relatives to attain or retain capability for the maximum self-support and personal and independence consistent with the maintenance of continuing parental care and protection. . . . 42 *U.S.C.*, Section 601

[9] *Pearce* was dismissed February 20, 1973 without prejudice. Current state policy is to require parents to appear at the Family Relations office of the Circuit Court, as a condition of eligibility, but does not require signing of complaints; see Conn. State Welfare Manual Vol I, Chapter III, Section P-3919 (Set forth in full in the Appendix to this Brief).

The protection of children from the hardships stemming from extreme poverty "is the paramount goal of AFDC." *King v. Smith, supra,* 392 U.S. at 325. Congress provided for the needs of the supervising relative, for example, when it became clear that the absence of such assistance jeopardized the health of the eligible children as well as the maintenance of an adequate home life for them. 64 Stat. 551, 42 U.S.C., Section 606(b). *See,* e.g., H.R. Rep. No. 1300, 81st Cong., lst sess. at 8,170; 95 Cong. Rec. 8584-5 (1950) (Remarks of Sen. Lucas): *Id.* at 8794. (Remarks of Sen. Lehman); *Id.* at 8813-14 (Remarks of Sen. Benton).

Connecticut General Statute Section 52-440b is inconsistent with these purposes of the AFDC Program. The imprisonment of an AFDC mother for the purpose of protecting the financial interests of her child, authorized by 52-440b, violates the statutory objective of fostering parental care of dependent children since the imprisonment would remove parental care.[10] Similarly detrimental is the imposition of fines up to $200 to AFDC families whose monthly income does not exceed a theoretical maximum of the minimum cost of living, as of July 1, 1969. *See,* 42 U.S.C. 602(a)(23) and *Johnson v. White* D.C. Conn., Docket Number 14,620. See also *Doe v. Schmidt* 330 F. Supp. 159, 167 (E.D. Wisc., 1971).

The 52-440b judicial citation and public examination of the conditions of illegitimacy would publicly brand both mother and child with the "continuing stigma of unwed motherhood" recognized by the Court in *Roe v. Wade* 410 U.S. 113, 153 (1973). The humiliation and degradation inherent in a contested paternity action

[10] This is not like a situation in which the mother would go to prison for a crime unrelated to the financial interests of her child, since coercion of her judgments concerning the family's best interests is the sole purpose of Section 52-440b.

would similarly harm both mother and child, and would expose the most private, intimate portions of a mother's life for public consumption.

Humiliation, imprisonment, and the imposition of financial hardship are diametrically opposed to the basic objective of the Social Security Act of "encouraging the care of dependent children" and do not "maintain and strengthen family life." 42 U.S.C. 601.

Additionally, H.E.W. regulations require that departmental standards "will not result in practices which violate the individual's privacy and personal dignity, or harass him or violate his constitutional rights." 45 C.F.R. 206.10(a)(10). The activities of court citation, public disclosure of confidential information or imprisonment of a non-criminal harass, embarass, and shame the recipient mother to the point that she must eventually choose between the removal of her family from welfare assistance or jail.[11] Thus, the Department of Health, Education and Welfare intended to incorporate in this regulation a "zone of privacy" at least as extensive as that constitutionally required; see Part III, infra.

B. Deterring applicants by providing AFDC benefits subject to a penalty is in effect an additional condition of eligibility.

As noted above the Connecticut Welfare Department was enjoined from refusing AFDC assistance to mothers and illegitimate children if the mother refused to disclose the putative father's name. *Doe v. Shapiro* 302 F. Supp. 761 (D. Conn., 1969), *appeal dismissed*, 396

[11]It is ironic that while the Connecticut Welfare Commissioner is proceeding in a no holds barred manner against AFDC mothers of illegitimate children that the department has consistently neglected to provide a service required by 42 U.S.C. 602(a)(15) for all state programs; "preventing or reducing the incidence of births out of wedlock."

U.S. 488, *rehearing denied*, 397 U.S. 970 (1970) and *Doe v. Harder* 310 F. Supp. 302 (1969) app. dismissed 399 U.S. 902 (1970). And see *Weaver v. Doe* 404 U.S. 987 (1971); *Carleson v. Taylor*; and *Juras v. Meyers*, 327 F. Supp. 759, aff'd 404 U.S. 803 (1972) (referred to hereinafter as the three summary affirmances). The rationale behind each of these decisions was elaborated in *Townsend v. Swank* 404 U.S. 282, 30 L.Ed.2d 448, 453 (1972):

> Thus *King v. Smith* establishes that, at least in the absence of congressional authorization for the exclusion clearly evidenced from the Social Security Act or its legislative history, a state eligibility standard that excludes persons eligible for assistance under federal AFDC standards violates the Social Security Act and is therefore invalid under the Supremacy Clause.

The compelling statutory authority of 42 U.S.C. 602(a)(10) for this line of cases requires that "aid to families with dependent children shall be furnished with reasonable promptness to all eligible individuals." See also, *King v. Smith*, 392 U.S. 309 (1968).

Connecticut's repsonse to the judicial prohibition of their denial of assistance to non-cooperating unwed mothers and their children has been to deter them from seeking AFDC assistance by subjecting them to a penalty. But the admonition of 602 (a) (10) that "aid. . . . . shall be furnished. . . . . to all eligible individuals" cannot logically be circumvented by substituting aid subject to a penalty in place of a refusal to provide aid. The protection extended to plaintiffs by the Social Security Act is destroyed when interpreted to permit far harsher treatment of the plaintiffs simply because they are protected from termination; the provision of welfare assistance subject to the penalty of possible imprisonment creates a strong deterrent to mothers contemplating application for assistance. A deterrent to application for assistance is not a legitimate

state purpose, *Shapiro v. Thompson* 394 U.S. 618. In effect a deterrent is the same as an additional condition of eligibility. The defendant's practices and procedures pursuant to 52-440b are thus barred by the decisions in *Doe v. Shapiro, supra,* and *Doe v. Harder, supra* and the three summary affirmances. As such they violate Section 602 (a) (10).

C. The statute violates the Social Security Act strictures against the public disclosure of confidential information.

Welfare recipients are safeguarded from the disclosure of confidential information by 42 U.S.C. 602 (a) (9) and 45 C.F.R. 205.50 which limit disclosure to administrative purposes such as eligibility, providing services, and determining eligibility. Citation and a public examination of the conditions of illegitimacy as a part of the AFDC Program clearly violate these Social Security Act safeguarding provisions.

D. The statute is not authorized by NOLEO.

The State Welfare Department's responsibilities in determining paternity and obtaining support are contained at 42 U.S.C.A. 602 (a) (17) and (18) and 45 C.F.R. 220.48 the so-called NOLEO provisions whose pertinent sections provide that: (1) the state agency will make efforts to establish paternity and secure child support; (2) the state agency will establish a single organizational unit to establish paternity and seek child support; and (3) the state agency must establish a plan for cooperation with court and law enforcement officials and provide pertinent information to courts and law enforcement officials.

There is no indication of any intent in Sections 602 (a) (17) and (18) to authorize action against welfare mothers, and such action is therefore barred because it is contrary to the basic objectives of the Social Security Act as defined in 42 U.S.C. 601 as well as provisions requiring the furnishing of assistance to all eligible individuals, 42 U.S.C. 602 (a) (10), safeguarding confidential information, 42 U.S.C. 602 (a) (9), and preventing harassment and violation of a recipient's privacy and dignity. The clear statutory intent of 42 U.S.C.A. 602 (a) (17) and (18), when read with other provisions of the Act is to require departments to provide programs assisting the present parent and/or itself to obtain support from nonrecipient legally liable relatives.

C.G.S. Section 52-440b is administered, as applied to welfare recipients, its major if not sole target group, as a part of the AFDC program; Depositions of Caroline Packard and Joseph Mancini, *passim* (A. 72-92, 103-124) and Conn. State Welfare Manual vol 1, p-3460 (reprinted in the Appendix to this Brief). Miss Packard testified that the policy was submitted to the Department of H.E.W., a normal procedure for AFDC policy which would be entirely pointless for any police power regulation of general applicability. Thus, although the statute is not formally a part of the Chapter dealing with AFDC, it must be struck down as violation of the Supremacy Clause.

In striking down an Oregon regulation requiring, as a condition of AFDC eligibility that the mother sign a non-support complaint, Judge Goodwin stated:

> The State Public Welfare Division was directed by Congress to secure the mother's cooperation in developing potential income resources, but it was not authorized to terminate an AFDC grant (which is for children) to coerce the cooperation of a mother . . . Neither do we hold that the State of

> Oregon may not seek the AFDC mother's cooperation *through means less drastic than the withdrawal of benefits* from her children. Juras v. Meyers 327 F. Supp. 759, 762, affirmed 404 U.S. 803, (1972) (emphasis added).

Clearly Section 52-440b uses means which are substantially more drastic, from the child's point of view as from the mother's, than those found to be unacceptable in *Juras*.

New York State Department of Social Services v. Dublino 413 U.S. 405 (1973) does not support Appellees here. In *Dublino* the Court held that the Social Security Act work rules (WIN) did not "provide the exclusive mechanism for establishing work rules under AFDC" 413 U.S. 405, 411, n.9. The Court emphasized that the essentially similar but farther-reaching state work rules at issue did not conflict directly with any other provision of the Social Security Act, nor did the case present a serious claim of constitutional immunity from such rules. Here, by contrast, there is direct conflict with one regulation and three separate provisions of the Act, as well as serious claims that the statute violates the mothers' constitutional rights. Compare *Townsend v. Swank* 404 U.S. 282 (1971); *Carleson v. Remillard* 406 U.S. 598 (1972), and the three summary affirmances. Indeed, the conflict with the Act is even more direct than it was in the three summary affirmances in that the sanctions and procedures involved with Section 52-440b contravene additional provisions of the Act.

As the District Court for the Northern District of New York put it, in distinguishing *Dublino*, from a case involving the so-called NOLEO regulations:

> A striking distinction between the two is that with respect to WIN, Congress made participation a condition of eligibility, while Congress has made no such provision in regard to NOLEO. . . .

> The Court's disposition in *Dublino* furnishes further support. While the Court resolved the pre-emption question against the plaintiffs, it nevertheless remanded the case for consideration whether New York provisions were in conflict with specific Social Security Act provisions, the very issue before this Court.

Shirley v. Lavine 365 F. Supp. 818, 824 (N.D.N.Y. 1973) appeal pending No. 73-1095.

Nor does 45 C.F.R. Section 233.90 (38 Fed. Reg. 10940), the H.E.W. regulation purporting to permit termination of assistance to mothers but not children, because of failure of the mothers to disclose the names of the fathers, aid the Commissioner. The regulation has been declared invalid; *Shirley v. Lavine, supra,* and it only purports to authorize the sanction of termination of assistance, a sanction not permitted under Section 52-440b. The sanctions involved in Section 52-440b, incarceration and fine, conflict even more basically with several provisions of the Social Security Act.

II.

THE STATUTE VIOLATES EQUAL PROTECTION.

Section 52-440b stands as something of an anomaly in Connecticut's law governing guardianship and support, both substantively and procedurally.[12] Through

[12]For the legitimate child in Connecticut, the right to receive support, to inherit, or to benefit from its father's social security, unemployment compensation, workmen's compensation or wrongful death claims, is established at birth, C.G.S. Sections 17-320, 45-274, 31-234, 31-306 and 42 U.S.C. Section 402d. In addition, any child is entitled from birth to support from the town in which he or she resides if such support is necessary, C.G.S. Section 17-273. State law also obligates both parents to

it, only the mother of an illegitimate child can be forced, on pain of incarceration, to reveal the identity and whereabouts of the other parent of a child. Through it, the mother of an illegitimate child can be forced to utilize the courts to seek financial support for the child even if she deems it inadvisable, but no law imposes a similar obligation on any other parents. There is no other Connecticut statute, and thus none applying to any other category of parents, which makes a natural parent's handling of a child's financial interests grounds for an interruption of the parental role. Nor does Connecticut move in other ways to protect what it deems the general financial interests of children from the judgments of their parents.

In short, the other statutes relating to support of minor children are designed and function to aid the parent having custody in defraying the cost to her or him of supporting a child, and empower the State

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support an illegitimate child; C.G.S. Section 17-320. In addition an illegitimate child is also entitled to unemployment compensation benefits, workmen's compensation benefits and wrongful death benefits; *Weber v. Aetna Casualty and Surety Co.* 406 U.S. 164 (1972); *Levy v. Louisiana* 391 U.S. 68 (1968); and *Glona v. American Guarantee and Liability Ins. Co.* 391 U.S. 73 (1968). An illegitimate child is not, however, entitled to inherit from its father, C.G.S. Section 45-274, and see *Labine v. Vincent* 401 U.S. 532 (1971).

Both parents are guardians of a legitimate child and each has equal authority; C.G.S. Section 45-43; guardian being defined as: "the person who has the custody of the person of the minor and has the duty and the authority to make major decisions affecting the welfare of the minor" PA 156 Sect. 19 (1973.) Only the mother is guardian of an illegitimate child, however, regardless of whether paternity is acknowledged or established; *Ibid.* Jurisdiction over petitions to remove a parent as guardian and petitions for appointment of a guardian is in the Probate Courts, *Ibid.* The mother of an illegitimate child remains its guardian unless and until removed as such by the Probate Court; *Lewis v. Klingberg* 100 Conn. 201 (1923). See, generally, "Family Law Jurisdiction: Its Connecticut Background", 26 Conn. B.J. 302 (1952).

Welfare Department to act only to protect its own interest. Section 52-440b, on the other hand, singles out a narrow class of parents, mothers of illegitimate children, and requires them to take affirmative actions even if they feel those actions would not be beneficial to their children and empowers the Welfare Department to act against the mothers even if it is in conflict of interest with the children. And it is enforced against an even narrower subclass, welfare recipients and mothers whose children have guardians other than themselves. Thus the statute singles out for special treatment illegitimate children and their mothers.

In determining whether governmental action at the federal, state or local level violates the equal protection principle, courts have applied standards of review ranging from lenient to stringent. See "Developments in the Law – Equal Protection", 82 Harv. L. Rev. 1065 (1969). Two standards are generally contrasted: (1) the lenient or "reasonable relationship" test: (2) the strict "scrutiny" test met only by demonstration of a "compelling state interest", applicable when the action invokes a "suspect" criterion or impinges upon a "fundamental right". In recent commentary and judicial opinion jurists have noted the emergence of "an 'intermediate approach' between rational basis and compelling interest as a test of validity under the equal protection clause" *Eslinger v. Thomas* 476 F.2d 225, 231 (4th Cir., 1973). This approach focusses on the substance of the governmental interest sought to be served and calls for assessment of the reasonableness of the means by which the regulation in question attempts to advance the identified interest. See Gunther, "The Supreme Court, 1971 Term, Forward: In Search of Evolving Doctrine on a Changing Court: A Model for a Newer Equal Protection", 86 Harv. L. Rev. 1 (1972); *Weber v. Aetna Casualty and Surety Co.* 406 U.S. 164

(1972); *Green v. Board of Education* 473 F.2d 629, 633 (1973, 2nd Cir.).

With respect to the applicable standard of review in this case, the position of appellants is four-fold: (1) the statute, in applying only against families with illegitimate children established a suspect classification for which no justification exists, (2) the statute, in applying against mothers but not fathers, establishes a second suspect classification, sex, which it fails to vindicate, (3) the statute, by applying to impinge the fundamental rights–parental control and privacy–of a politically powerless minority–mothers of illegitimate children, must be subjected to close scrutiny, and (4) the classifications utilized by the statute are not rationally related to any legitimate state purpose.

A. The statute, operating on the basis of legitimacy, establishes a suspect classification.

An explicit affirmation by this Court of the suspect nature of legitimacy classifications would come as the logical culmination of its recent decisions reviewing such classifications. Thus, in *Levy v. Louisiana* 391 U.S. 68 (1968); *Glona v. American G and L Ins. Co., supra; Weber v. Aetna Casualty and Surety Co., supra;* and *Gomez v. Perez* 409 U.S. 535 (1973), the Court has carefully examined the states' various rationales for making a child's illegitimacy of birth a disqualification for receipt of statutory entitlements by the child or mother, or for state enforcement of paternal support. In each case, the Court has found such classification by legitimacy to be unconstitutional. The intimation of suspect status in *Weber* 406 U.S. 164, 176, n.14, moreover, and the *per curiam* character of the *Gomez* opinion would seem to confirm an ineluctable movement toward such a declaration of suspect status.

In *Labine v. Vincent* 401 U.S. 532 (1971), the Court upheld a classification based on legitimacy for purposes of intestate succession from the father. The subsequent opinion in *Weber*, though, underlined the need informing *Labine* for "prompt and definitive determination of the valid ownership of property left by decedents", 406 U.S. 164 at 170, (quoting *Labine v. Vincent* 229 So.2d 449, 452 (La. App. 1969)). Given the impossibility of discovering the intestate decedent's actual intent and the temporal pressures noted in *Weber* to settle the status of the intestate landowner's property, the imperfect classification by legitimacy under review in *Labine* constituted the best possible under the circumstances. The intestacy situation thus comported with the demands of strict scrutiny, and *Labine* need not be overruled should the Court establish illegitimacy of birth as a suspect classification.

The claims of appellant illegitimate children and their mothers to suspect classification characterization appears to turn on their comprising a politically impotent outgroup.[13] Appellants' virtual exclusion from legisla-

[13]Hitherto the Court has found three types of classifications to be suspect: race, alienage and nationality; *Brown v. Board of Education* 347 U.S. 483 (1954); *Graham v. Richardson* 403 U.S. 365 (1971); and *Korematsu v. U.S.* 323 U.S. 214 (1944). Thus no statutory classification on these bases can be upheld unless it is a perfect fit: neither over nor underinclusive, and designed for the promotion of a legitimate purpose. See, e.g. *Loving v. Virginia* 388 U.S. 1 (1967). There may be an additional exception for instances in which an emergency need for immediate classification exists: *Hirabayashi v. U.S.* 320 U.S. 81 (1943). See Note "Mental Illness: A Suspect Classification?" 83 Yale L.J. 1237 (1974).

The Court has never explicitly designated the determinative criteria for establishing race, alienage and nationality as suspect classifications, but the repeated focus on perfection in classification suggests that a determination has been made that the legislative process is peculiarly untrustworthy when employing these three classifications and, hence, its products must be

tures is a matter for judicial notice. Their "outsider" status as concerns the political process, furthermore, seems evident on the basis of: (1) their miniscule percentage of the voting population; see 7 Int'l Ency. Soc. Sci. 85, 87-89 (1968), Statistical Abstract of the United States, 12, 54, 382 (1973); (2) their general membership in the underprivileged and thus politically weak groups; *Ibid*, 54; (3) their insularity from other social groups which might be expected to raise claims on their behalf; see Young, *Out of Wedlock* (1954) 1-3,

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carefully scrutinized. One cause for such distrust lies in the self-interest of legislators when classifying along these lines. For example, since the great majority of legislators have invariably been white, one may expect that racial classification which necessarily involve comparative generalizations along racial lines, and hence cost-benefit differences, will generally deviate from non-classifications in ways redounding to the interests of white legislators; See, Note, supra. 83 Yale L.J. 1237, 1245-1250. The second seemingly necessary criterion for status as a suspect classification appears to be the political impotence of the disadvantaged group. See Harold Lasswell, *Politics: Who Gets What, When How?* (1958) at 13-27, and Note, supra. 83 Yale L.J. 1237 at 1250-1, 1254-8. A third criterion, immutable characteristics determined at or by birth, has been cited by the Court: *Johnson v. Robison* ___ U.S. ___, 39 L.Ed.2d 389 (1974). Since alienage is not immutable, that clearly is not necessary to find a suspect classification.

On these criteria, appellants, both mothers and children have a strong claim to suspect classification characterization. As a leading authority has summarized:

> It was natural that men, as legislators, would have limited their accidental offspring's claims against them both economically and in terms of a family relationship, especially since the illegitimate mother often did not equal their own. Moreover, their legitimate wives had an interest in denying the illegitimates' claim on their husbands, since any such claim could be allowed only at the expense of the legitimate family. Against these forces have stood only the illegitimate mother and the helpless child. It is thus not surprising that our laws are inconsiderate of the child's interests.... In nearly all instances, classification based upon the criterion of legitimacy alone either is not related to a proper legislative purpose or, if a proper purpose is in

114-5 and 7 Int'l Ency. Soc. Sci. supra., 579-581, and (4) their repeated victimization by imperfect classifications; *Weber v. Aetna Casualty and Sur. Co., supra*, (and other cited supra. p.35). See also *Frontiero v. Richardson* 411 U.S. 677 (1973).

The classifications of Section 52-440b thus necessitate strict scrutiny. Is the statute over-inclusive and/or under-inclusive? Is it justified by an emergency compelling an immediate classification? These questions must be answered against a background of the purposes which the statute may be designed to serve: (1) recoupment by the state of welfare moneys paid out for the support of dependent children, and (2) the interests, principally the financial interests, of the children in establishing paternity.[14] Considered against either of these purposes, the classifications made by Section 52-440b are such a poor fit as to require the statute's demise.

1. Recoupment of AFDC benefits.

The categories set up by Section 52-440b are not designed to fit a statutory purpose of recoupment in

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the picture, such a classification is grossly "over or under inclusive."

H. Krause, *Illegitimacy: Law and Social Policy* (1971) at 83-4.

[14] The District Court, accepting Appellees' position, found that the statute was principally designed for the latter purpose; 365 F. Supp. 65, 77. But, there is no support for that view in the legislative history, state court construction or even the administrative rules for its application. See footnote 3, ante, p. 5. The enforcement classifications make no sense when viewed against that purpose, see pp. 32-33 infra. State courts dismissed petitions filed under the statute when it became clear that the state had no financial interest even though the child clearly did have such an interest; *Norton v. Bilodeau* (9th Cir. April 2, 1973); *Norton v. Abascal* (Ibid) (Appendix to Children's Brief). And all of the relevant provisions of the Connecticut State Welfare Manual are in the Chapter concerned with recoupment rather than that concerned with Child Welfare (Conn. State Welfare Department Manual, Vol. 2).

several ways. The statute establishes a draconian program aimed at recoupment of benefits by requiring mothers of illegitimate children to identify, locate and pursue the father for support, but neither it nor any other statute or regulation establishes such a program with regard to deserting fathers of legitimate children, compare *James v. Strange* 407 U.S. 128 (1972), and *Rinaldi v. Yeager* 384 U.S. 305 (1966).[15] Furthermore, the obligation to disclose fathers' names and prosecute paternity actions applies, facially, to all mothers of illegitimate children, not just welfare recipients. And the enforcement provisions of Section 52-440b apply to at least one group of mothers from whom a *recoupment purpose* would be irrelevant; cases in which a guardian or *guardian ad litem* has been appointed but the child does not receive welfare benefits. Fourth, the statute is not by terms limited to those mothers who are able to name the fathers, nor does it exclude instances in which the father could plead the running of the statute of limitations as a defense to a paternity action. Finally, the statute will involve pursuing some fathers not financially able to pay and thus again sweeps too broadly. See *Linda R.S. v. Richard D.* 410 U.S. 614 (1973).

[15]There is, of course, a NOLEO program dealing with deserting parents of legitimate children, but it is far less coercive that Section 52-440b; Conn. State Welfare Manual Vol. 1 Section P-3919 (set out in the Appendix to this Brief). There is a choice of courses of action and no quasi-criminal penalties in P-3919.

2. Financial interests of the children.

Even if Section 52-440b did advance the financial interests of illegitimate children,[16] its classifications are so far from perfect embodiments of that purpose as to cast doubt on the bona fides of that professed purpose. First, in applying only to mothers of illegitimate children it is once again underinclusive, Cf. *James v. Strange, supra.* Second, in applying to many mothers, including appellants, where the child's overall best interests will or may not be advanced by disclosure, the statute is overinclusive; See, *Cleveland Board of Education v. LaFleur* ___ U.S. ___, 39 L.Ed.2d 52. Finally, the statutory sanctions of jail and fine operate directly contrary to the child's interest in every case; see e.g. *Jackson v. Indiana* 406 U.S. 715 (1972).

In applying to cases in which neither the state nor the child has any substantial interest, such as where the mother is perfectly capable of supporting the child by herself, or where the mother already has in her possession a signed acknowledgement of paternity, the statute is also overinclusive and unnecessary. Finally, in compelling the prosecution or a paternity action where the Commissioner of Welfare has the power to bring such an action in his own name or where the mother

[16]In many cases, the child's financial interests will not be affected by Section 52-440b: where the putative father is not amenable to process or is indigent, or where the child would by necessity remain a recipient of AFDC even with parental support. Additionally, litigation of a paternity action runs the risk of a finding of nonpaternity, which would cut off any chance the child had of receiving benefits through its father, a situation substantially worse than leaving the question open. Thus, even in purely financial terms, the statute will often fail to assist the child. And in terms of a child's other interests, maternal supervision and harmony, avoidance of public humiliation and so on, the statute is devastating, see Children's Brief.

has an acknowledgement of paternity in her possession, the statute is also overinclusive and unnecessary.

Nor does the record disclose any emergency requiring that a rough classification be attempted. Nor does it show that the classification according to legitimacy set up by Section 52-440b is the best practicable embodiment of either a state policy of recoupment of AFDC benefits or of a state policy of advancing the general interests of children through the provision of mechanisms to secure support for them; compare *Labine v. Vincent*, 401 U.S. 532. Section 52-440b thus meets neither of the exceptions to the rule that statutes establishing suspect classifications violate equal protection. Accordingly it must be declared unconstitutional.

Furthermore, it may well be that the true purpose of Section 440b is punitive; it penalizes appellants solely because they have borne children out of wedlock. This inference is supported by the irrationality of the classifications when measured against other possible purposes. See e.g. *James v. Strange* 407 U.S. 128, 142. Certainly a retributive purpose is not permissible: it penalizes appellants because of a status; see *Robinson v. California* 370 U.S. 660 and *U.S. Department of Agriculture v. Moreno* 413 U.S. 528 (1973).

B. The statute, because it operates to infringe a fundamental right – parental control of family decisions – must be subjected to close scrutiny.

The Court has often indicated a flexibility in its standard of "rational" classification according to the identity of the disadvantaged class; see e.g. *Reed v. Reed* 404 U.S. 71; *U.S. Department of Agriculture v. Moreno* 413 U.S. 528, 534 (1973). It has also scrutinized classifications when the nature of the

interest of which the disadvantaged class alleges deprivation is at least substantial and probably "fundamental"; *Eisenstadt v. Baird* 405 U.S. 438 (1972), *Dandridge v. Williams* 397 U.S. 471, 520-21 (1970) (Marshall, J., dissenting). And see generally; *Dunn v. Blumstein* 405 U.S. 330, 335 (1972); *Village of Belle Terre v. Boraas* ___ U.S. ___ 39 L.Ed.2d 797, 807-8 (Marshall, J, dissenting); Gunther, *Forward* 86 Harv. L. Rev. 1.

Even if illegitimacy were not a suspect classification, it is quite clear that the Court has regularly probed intently the rationality of statutory classification based on the illegitimacy of the statutory object, and such classifications have been struck down with the single exception of the intestacy situation. As noted above, classifications disadvantaging mothers of illegitimate children are equally deserving of scrutiny as classifications disadvantaging the children. And a facially general statute which can be enforced only against welfare recipients should also be scrutinized carefully to determine whether legitimate state purposes are advanced by the limited enforcement classification; *Rinaldi v. Yeager* 384 U.S. 305; *Shapiro v. Thompson* 394 U.S. 618.

Section 52-440b threatens the "intimate familial relationship between a child and his own mother", an interest found so probative by the Court in *Levy v. Louisiana* 391 U.S. 68, because enforcement of this law may result in separation of mother and child and will undoubtedly put a severe strain on their relationship, Deposition of Solnit, *passim.* (A. 62-71) The implications for the appellants' freedom of self-determination, set forth in detail in Section III infra, also demand a high standard of review; Cf. *Eisenstadt v. Baird* 405 U.S. 438.

The District Court argued that coercion of appellant mothers was necessary to secure the equal access to

support payments due the children under C.G.S. Section 17-320, citing *Gomez v. Perez* 409 U.S. 535. But nothing in *Gomez* supports the invasion of equally fundamental rights of the appellant mothers. On the contrary, *Gomez* was concerned with failure of the state to provide adequate and equal procedures to assist the mothers in obtaining support from the fathers. Thus, a more logical extension of the *Gomez* holding would be to require states to increase the statute of limitations in paternity actions so that the father's obligation to support could not be cut off by the running of an essentially arbitrary period of time.

The socially disadvantaged character of the classes affected by Section 52-440b was established by the defendant; A. 56-61. Thus, as concerns this group of illegitimate children and their mothers, one cannot ignore the punitive impulses, and hence the extent to which ostensibly permissible state objectives may only mask "a bare congressional desire to harm a politically unpopular group" *U.S. Department of Agriculture v. Moreno* 413 U.S. 528.

Accordingly, even if the Court is reluctant to establish strict scrutiny as the test for all legitimacy classifications, this particular legislative classification should be held to an exacting standard of review. The defects in classifications of Section 52-440b have been discussed. Clearly under this demanding standard of review, the statute does not pass muster.

C. The statute, fails to vindicate its classification based on sex.

Section 52-440b also establishes an unconstitutional classification according to sex by subjecting only *mothers* to its requirements and concomitant penalties.

Child support is an obligation enforceable against either parent, whether the child be legitimate or not; C.G.S. Section 17-320. Whenever there is one present and one absent parent, the present parent may be a source of information leading to the locating of the other parent and enforcement of the child's right to support from the absent parent. There is no reason to suppose that fathers would be any less helpful than mothers. Either of the purported purposes of the statute would be more fully achieved by a broader classification compelling fathers as well as mothers to cooperate in divulging information as to the identity and/or whereabouts of the absent parent. The connection between the classification and either permissible goal is irrational. *Reed v. Reed* 404 U.S. 71 (1971). Nor is the classification saved by either an emergency need for immediate classification or practicable perfection. It therefore violates equal protection.

D. The statutory classifications are not rationally related to any legitimate state purpose.

Section 52-440b does not even survive the least stringent equal protection test, whether the discriminations set up rationally further some permissible state purpose; *Yick Wo v. Hopkins* 118 U.S. 356 (1886); *McGowan v. Maryland* 366 U.S. 420 (1961). Appellants submit that the State has invidiously discriminated against them, quite apart from any power to regulate parental relationships generally.

It may be, as the District Court thought, that there is a rational relationship between enforcement of disclosure of identity against welfare recipients only, and the permissible state purpose of recoupment of welfare benefits, 365 F.Supp. 65, 82. But there is no reason to provide sanctions of jail or fine to mothers of

illegitimate children for their failure to assist in the identification of legally liable relatives but permit all other parents to go unpunished for the same failure. Yet, viewed with the other Connecticut statutes and Welfare Department regulations, that is precisely the effect of Section 52-440b. As Justice Powell wrote for the Court in *James v. Strange:*

> State recoupment laws, notwithstanding the state interests they may serve, need not blight, in such discriminatory fashion the hopes of indigents for self-sufficiency and self-respect. The statute before us embodies elements of punitiveness and discrimination which violate the rights of citizens to equal treatment under law. 407 U.S. 128, 142.

This statute, in applying special procedures to a subcategory of the persons to whom the legitimate purposes of the statute might reach, embodies precisely the same elements of punitiveness as the statute struck down in *James v. Strange*. It is a violation of equal protection in this respect as well.

III.

CONNECTICUT GENERAL STATUTES SECTION 52-440b VIOLATES APPELLANTS' CONSTITUTIONALLY GUARANTEED LIBERTY

> It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include the preparation for obligations the state can neither supply nor hinder. *Prince v. Massachusetts* 321 U.S. 158, 166 (Rutledge, J).
>
> The child is not the mere creature of the State; those who nurture him and direct his destiny have the right coupled with the high duty, to recognize and prepare him for additional obligations. *Pierce v. Society of Sisters* 268 U.S. 510, 535 (McReynolds, J).

Thus have two Justices defined the "liberty" guaranteed against state interference without due process in the area of regulation on family decision-making.

May a state, constitutionally, require all mothers of illegitimate children, by threat of public humiliation, fine and/or imprisonment (and the concomitant prospect of breaking up the family) to disclose the name of the putative father of their children and prosecute bastardy actions? Section 52-440b requires a mother to do so even if she has determined that such disclosure and/or prosecution would not be in the best interests of her child and herself. Appellant mothers submit that their right to make this decision, whether or not to prosecute a bastardy action, is protected from arbitrary and unnecessary interference by the constitutional zone of privacy, and that Section 52-440b constitutes arbitrary and unnecessary intereference.

A. The right of parents to determine family actions and the integrity of the family are within the constitutionally protected zone of privacy.

The right of parents to determine the care of their children has long been recognized as constitutionally protected liberty; *Meyer v. Nebraska* 262 U.S. 390 (1923); *Pierce v. Society of Sisters* (supra); *Prince v. Massachusetts* (supra). The integrity of the family unit has likewise been protected; *Griswold v. Connecticut* 381 U.S. 479; *Stanley v. Illinois* 405 U.S. 645 (1972), as have the right to determine, without state interference, such matters as sex, child-bearing and marriage;

see e.g. *Skinner v. Oklahoma* 316 U.S. 535; *Loving v. Virginia* 388 U.S. 1; *Eisenstadt v. Baird* 405 U.S. 438; and *Roe v. Wade* 410 U.S. 113 (1973). A right which is within the constitutionally protected "zone of privacy" can be infringed only where there is a compelling state interest; *Roe v. Wade, supra,* 153-156, and then only by statute "narrowly drawn to express only the legitimate state interests at stake"; *Roe v. Wade,* Ibid. It must not be unnecessary, arbitrary or capricious; *Cleveland Board of Education v. LaFleur* ___ U.S. ___ 39 L.Ed.2d 52. The burden of proving that such compelling interest exists is on the state, *Roe v. Wade* 410 U.S. 113, 156.

The zone of privacy protects relationships including doctor-patient relationship; *Roe v. Wade, supra. Doe v. Bolton* 410 U.S. 179 (1973), and the marital relationship; *Griswold v. Connecticut, supra.* It also protects individuals; *Eisenstadt v. Baird, supra.* Where the privacy of a family is concerned, what is protected is the parent's right to decide questions affecting the family: see *Pierce v. Society of Sisters, supra; Stanley v. Illinois, supra:* at least until the children are old enough to formulate their own views on the subject; see *Wisconsin v. Yoder* 406 U.S. 205, 229 et seq., and *Matter of Seiferth* 309 N.Y. 80.[17]

[17]Although the Constitutional privacy doctrine is now well established, it may be important to look at its theoretical foundation to show that appellants' right to decide whether to bring a paternity action is within its scope. In the *Griswold* case, a plurality of the Court defined the constitutional right of privacy as an extension or "implicit in the concept of ordered liberty". Thus the extent of the right may be ascertained by looking to the values implicit in the more specific guarantees of the Bill of Rights. See also *Cleveland Board of Education v. LaFleur* ___ U.S. ___ 39 L.Ed. 2d 52.

The right claimed by appellants is closely related to First Amendment values in at least two ways. First, the right to petition for redress of grievances including the right to access to courts implies a corresponding right not to resort to courts if she does not believe that to be in her best interests. Second, the

There is no previous decision of this Court which deals squarely with the issue presented here. However, in *Cleveland Board of Education v. LaFleur* ___ U.S.

right to associate freely implies some right to prevent the public disclosure of that association where such disclosure might impair the right. Cf. *Bates v. Little Rock* 361 U.S. 516 (1960); *N.A.A.C.P. v. Alabama* 357 U.S. 449.

Appellants' claims are closely related to Fourth Amendment values in that Section 52-440b is an intrusion into a normally private area without prior due process, for the purpose of seizing evidence for litigation. Additionally, it can be used to force mothers to disclose the most intimate details of their sexual life in a public forum, an unreasonable seizure of evidence per se; *Griswold v. Connecticut* 381 U.S. 479. Due to the immunity granted by C.G.S. Section 52-435b, appellants do not claim that 52-440b infringes their rights under the Fifth Amendment, though it is related in that the enforced disclosure would subject them to public obloquy and scorn, a result very likely as injurious as prosecution.

Finally appellants' claims are closely related to the values underlying the Eighth Amendment's guarantee against cruel and unusual punishment. A sentence of up to one year in jail and a $200.00 fine, while not usual in contempt proceedings, see C.G.S. Section 6-70 (coroner's inquest, maximum sentence of 30 days for contempt) or Section 7-270 (City Board of Police Commissioners, maximum sentence of 30 days for contempt), is also not unheard of, see C.G.S. Sections 2-46-2-48 (Investigation of General Assembly maximum sentence of one year). It is, however, totally unknown in any other context relating to a parent's obligation with respect to the intangible interests of her child; compare *Trop v. Dulles* 356 U.S. 86 (1958). Appellants also seek to protect from public exposure a status, illegitimacy, which while not otherwise criminal, could subject them to humiliation; *Robinson v. California* 370 U.S. 660. Finally appellants submit that a significant purpose of the statute is to punish them for the status of their children.

The Ninth Amendment also formed part of the basis for the Constitutional right of privacy enunciated in *Griswold* (see especially opinion of Goldberg, J, concurring, 381 U.S. 479, 488). The purpose usually ascribed to the Ninth Amendment was to make plain that the enumeration of personal rights in a Bill of Rights did not alter the basic intent that the *Federalist* No. 84

—, 39 L.Ed.2d 52 (1974) the Court defined constitutional privacy to include "freedom of personal choice in matters of marriage and family life", 39 L.Ed.2d 52, 60, in striking down forced maternity leave provisions which required pregnant school teachers to terminate their employment without regard to their ability to continue working or to the beginning or end of a school term. Thus the Court recognized the rights of women not only to determine when they would bear children, but also to be free from arbitrary or capricious regulations activated by that decision but made by the state with regard to other aspects of their lives. And in *Stanley v. Illinois* 405 U.S. 645 the Court protected families which, like those of appellants contained an illegitimate child, from arbitrary state action, finding "family integrity" to be consitutionally protected.

Several lower courts have intimated that the right of parents to make decisions as to their children's best interests lie within the constitutionally protected zone of privacy; *Merriken v. Cressman* 364 F.Supp. 913 (E.D. Pa. 1973); *Haley v. Troy* 338 F.Supp. 794, 804 (D. Mass. 1972); *In re Stuart* 114 F.2d 825 (D.C. Ct. App. 1940). And see Newman, J. concurring below 365

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with 1 Annals of Congress 439 (Gales and Seaton) (Madison's explanation of the need for the Ninth Amendment). See, also Story, II, *Commentaries on the Constitution of the United States* 626-7 (5th ed. 1891). Another function was to make it clear that citizens were to be protected from the use of legal devices which had not yet been developed:

"It was preferred to quiet expressed fears that a bill of specifically enumerated rights could not be sufficiently broad to cover all essential rights and that the specific mention of certain rights would be interpreted as a denial that others were protected." Goldberg, J., concurring in *Griswold v. Connecticut* 381 U.S. 479, 488-9. The Ninth Amendment has not been authoritatively construed since the passage of the Fourteenth Amendment drastically altered the federal system. See generally Rhoads and Patula, "The Ninth Amendment: A Survey of Theory and Practice in the Federal Courts Since Griswold v. Connecticut 50 Denver L.J. 153 (1973).

F.Supp. 65, 85. In striking down a "voluntary" school program designed to screen student personalities to predict future drug use, by use of a detailed set of intimate questions the *Merriken* court held:

> These questions go directly to an individual's family relationship and his rearing. There probably is no more private a relationship, excepting marriage, which the Constitution safeguards than that between parent and child. This Court can look upon any invasion of that relationship as a direct violation of one's Constitutional right of privacy, 364 F.Supp. 913, 918.

Indeed, the only holding to the contrary is the majority opinion below. And it contains not one word of explanation nor any supporting authority.

All mothers of illegitimate children are faced with a difficult choice: whether to pursue the vague possibility of receiving support and/or other benefits from putative fathers through the channel of a paternity action, or to forego that vague possibility of financial benefit. A paternity action may entail public examination into all of the details of the mother's sexual life with resultant feelings of humiliation and worthlessness.[18] Even if successful, it may not be worth the price as, for example, if it causes the father to break off a relationship with the mother and child, or if the father is financially unable to support the child. And if unsuccessful, it would cut off any possibility of support or benefits from the father, a result not necessarily attending a case in which no paternity action is ever brought.

About seventy (70) per cent of mothers nonetheless voluntarily choose to disclose the father's name and bring a paternity action; Deposition of Mancini, (A. 112).

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[18] Affidavit of Kathrine Lopes, *passim* (SA 10.15).

Appellant mothers have chosen not to bring a paternity action, for reasons which reflected their interests and their children's interests.[19] Appellee did not dispute their contention that paternity actions would not advance their children's interests. Appellants submit that where a decision is as close to the core of the parental function as this, and where the competing considerations are as complex as these, their decision must be respected. No decision of this Court upholds an invasion of the parental function as sweeping and crucial as that accomplished by Section 52-440b. On the contrary, in all cases presenting questions even nearly this basic to family life, the Court has protected parental liberty; *Stanley v. Illinois* 405 U.S. 645; *Skinner v. Oklahoma* 316 U.S. 535; *Loving v. Virginia* 388 U.S. 1; *Pierce v. Society of Sisters* 268 U.S. 510; and *Meyer v. Nebraska* 262 U.S. 390.

The Constitutional right of privacy is a doctrine designed to prevent just such new invasions of privacy as 52-440b entails. In his pioneering book, *Privacy and Freedom* (N.Y., Athaneum, 1967) Professor Alan Westin summarizes:

> Thus if we look at leading cases in the liberty area decided by the Supreme Court in the past decade, we find that the Justices, intuitively rather than explicitly, have been laying out many of the basic elements of a functional definition of constitutional privacy. The functions of autonomy, evaluation, release and limited communication have each been protected under the new cases, and the Court has dealt with each of the four basic states of privacy; solitude, intimacy, anonymity and reserve. p. 385.

Unquestionably the rights of appellant mothers to control the decision as to whether to bring a paternity

[19]The evidence concerning the particular reasons for their refusal is summarized in the Statement of Facts, pp. 6-7 supra.

action on behalf of their children by deciding whether to divulge the name of the putative father is to use the functions of autonomy and limited communication to protect the basic states of privacy, particularly of anonymity and reserve. Thus their claim is within the "zone of privacy" protected by the First, Fourth, Eighth, Ninth and Fourteenth Amendments to the Constitution.

There are, of course, limitations to the extent of the constitutional zone of privacy. Limits may be imposed either by opposing constitutional rights or by "compelling interests"; *Roe v. Wade* 410 U.S. 113, 153. "Compelling interests" may include the interests of the individual child; *Stanley v. Illinois, supra,* or of the public; *Jacobson v. Massachusetts* 197 U.S. 11. Appellants submit that neither an opposing constitutional right nor a compelling interest is served by Section 52-440b.[20]

There is no constitutional right in opposition to Appellant mothers' exercise of parental decision-making.[21] Nor are the financial interests which,

[20]The appellee did not plead compelling interests, although it is his burden to prove that any such interests exist and are rationally advanced by the statute; *Roe v. Wade* 410 U.S. 113, 156.

[21]The children have a statutory right to support from their mothers or if the mothers are unable to provide such support, from their fathers or the town in which they reside; C.G.S. Section 17-320, 17-273. And they have a constitutional right to equal treatment under the support laws regardless of their illegitimate status; *Gomez v. Perez* 409 U.S. 535. But there is no constitutional right to receive support. Nothing in *Gomez* supports the claim that the child's interest in financial support may be presumed to be greater than the parent's constitutional right to direct the child's upbringing; it was concerned rather with state law impediments to the mother's right to establish the child's right to receive support.

Although the Court has ruled that in case of direct conflict of interest at the most basic level, the right to life, the mother's

Appellee asserts, oppose the mother's rights compelling interests; *Shapiro v. Thompson* 394 U.S. 618 (1969).[22] Nor does any interest of the child in securing and receiving support from its father conflict with the mother's interests, since the function of support laws is to assist the parent having custody in providing for the child's needs; see e.g. *Pelak v. Karpa* 146 Conn. 370. Connecticut does not seek to regulate in any other circumstances or against any other classes of parents, parental decisions which may adversely affect their children's financial interests, in apparent recognition of the importance of parental independence.

Cases imposing on parents the duty of cooperating with other types of public policies are not controlling here. In *Jacobson v. Massachusetts* 197 U.S. 11, the Court upheld a state law making vaccinations compulsory. The rationale for decision was that there was a particular public interest in preventing the spread of disease which justified over-riding any private interests to the contrary. In the language of later cases, the public health constitutes a compelling state interest.

In *Prince v. Massachusetts* 321 U.S. 158, the Court upheld a criminal conviction of a parent for violation of the child labor laws over a claim that the First Amendment's free exercise of religion clause prevented the state from so criminalizing religious activity, in that case the selling of religious tracts. In so ruling, the court relied upon the validity of the child labor laws

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right must take precedence over the child's, *Roe v. Wade* 410 U.S. 113, 163-4, appellant mothers do not rely on an assignment that their right to privacy is greater than their children's right to support. Rather, appellants contend that the state may not presume that those interests are in conflict.

[22]The financial interest opposing their rights is that of the state and not of their children; Introduction *supra*, pp. 12-14; Part II, pp. 31-34.

which found a public purpose sufficient to override any contrary private interests, see, e.g. *Sturges v. Beauchamp* 231 U.S. 320 (1913). The holding in *Prince* has been limited by later interpretation, *Sherbert v. Verner* 374 U.S. at 402-3, *Wisconsin v. Yoder* 406 U.S. at 230, and it is not clear that the decision in *Prince* would be upheld in light of the "compelling state interest" test now applicable to cases involving the constitutional right of privacy, see *Roe v. Wade* 410 U.S. 113, 153-6. *Prince*, in any case was concerned with the validity of a regulation upon the *activities* of minors though enforced against their guardians. It is hardly determinative of this case in which the state seeks to force mothers to act to protect what it believes to be the *abstract* interests of babies. See also *State v. Bailey* 157 Ind. 324; *Pierce v. Society of Sisters* 268 U.S. 510, 534; *Wisconsin v. Yoder supra*.

Nor do cases permitting the state to remove children from the parents' custody temporarily to affect vital medical procedures support defendant's position. See e.g. *People ex. rel. Wallace v. Labrenz* 411 Ill. 618, cert. den'd 344 U.S. 824 and *Jehovah's Witnesses v. King County Hospital* 278 F. Supp. 488 D. Wash., (1967). They impose no penalty on the parents and permit such removal only after individual due process hearing as to its propriety. See e.g. *Stanley v. Illinois, supra*.

All of these cases presented a clear, articulated and legitimate state purpose upheld where it could be characterized as "compelling". Section 52-440b has no such purpose.

Nor have Appellants, by applying for and receiving assistance under the AFDC program, waived their rights. On the contrary, the Social Security Act protects the rights of privacy and self-determination in setting out the purposes of the AFDC program; see Section I, supra, pp. 18-20. *Wyman v. James* 400 U.S. 309 (1971) is not to the contrary; it involved a genuine interest of

the children, freedom from physical abuse and maltreatment, whereas Section 52-440b is a recoupment statute or, at most is designed to advance the abstract interests of children. Even if Section 52-440b did advance children's interests, *Wyman* does not support Appellee since the *Wyman* regulation involved only the issue of welfare eligibility, and the Court expressly disapproved of the quasi-criminal sanctions found in this statute:

> We note, too, that the violation in itself is not forced or compelled, and that the beneficiary's denial of permission is not a criminal act. 400 U.S. 309, 317 (Blackmun, J.).

While conscientious and capable parents had nothing to fear from the visits upheld in *Wyman*, Section 52-440b coerces all of the members of one class of AFDC parents: mothers of illegitimate children. By removing their freedom of choice, it disadvantages all of them. And the invasion is neither limited nor minor.

B. The District Court erred in failing to find that the constitutional right of privacy includes a privilege against disclosure.

The areas of sexual conduct and procreation are unquestionably protected by the "zone of privacy"; *Griswold v. Connecticut* 381 U.S. 479; *Skinner v. Oklahoma* 316 U.S. 535; *Loving v. Virginia* 388 U.S. 1; *Eisenstadt v. Baird* 405 U.S. 438; *Roe v. Wade* 410 U.S. 113. The District Court, however, held that the privacy thus protected did not include any right to prevent disclosure, 365 F. Supp. 65, 75-78. Such a holding renders the right meaningless.

Wyatt v. U.S. 362 U.S. 525 (1960) cited by the District Court as precluding a privilege against disclosure is not in point. The Court held in *Wyatt* that the

common law marital privilege against testimony did not apply to prosecution under the Mann Act and that, given the legislative history of that act, it could not be claimed "voluntarily" by the wife. Not only did *Wyatt* precede *Griswold*, but the wife in *Wyatt* could make no claim that her privilege was necessary to protect her constitutional privacy right; *Caminetti v. U.S.* 242 U.S. 470 (1917). And *Wyatt* was concerned with the compulsion to testify in a criminal prosecution which under its circumstances was a compelling state interest, while Section 52-440b has no purpose other than compelling the disclosure for purposes of state usurpation of the parental role. The District Court's equation of prostitution with the bearing of a child out of wedlock again reveals the punitive purpose of Section 52-440b.

By holding that only the Fifth Amendment is a constitutional bar to compelled disclosures, the District Court ignored and undermined several decisions of this court finding such privileges in other rights "implicit in the concept of ordered liberty"; *N.A.A.C.P. v. Alabama* 357 U.S. 449; *Bates v. Little Rock* 361 U.S. 516; *Shelton v. Tucker* 364 U.S. 479; and *Watkins v. U.S.* 354 U.S. 178 (1957). All of these cases held that the First Amendment incorporates a right to prevent divulgences of some types of private information. A privilege against divulgence is essential to the constitutional right of privacy.[23] *Griswold* would be a hollow

[23] Other lower courts which have considered the question have uniformly concluded that the right to privacy does include some rights against disclosure, though they have differed on the ultimate results. See e.g. *Schulman v. New York City Health and Hospital Corp.* 346 NYS 2d 920 (appeal pending), which struck down a New York City Health Department regulation requiring the filing of a fetal death certificate following an abortion; *Roe v. Ingraham* 480 F.2d 102 (2d Cir. 1973) convening a three-judge court to determine, inter alia, whether a requirement that certain medical prescriptions must be registered with the State

shell if married couples could be compelled to testify in open court concerning their use of contraceptives.

There is no question that, for a woman to appear in court, be examined and cross-examined as to the names of persons with whom she had sexual intercourse, their address and other identifying information, and other details of her past sexual conduct, is a humiliating and degrading experience. Paternity actions, if contested are fraught with such humiliation.[24] Yet Connecticut has made it public policy to force all mothers of illegitimate children to undergo such humiliation if necessary to establish paternity even though neither mothers nor children may ever benefit from the result. Under Section 52-440b, Appellee forces mothers of illegitimate children to 1) identity the fathers in open court, including disclosure of any details deemed relevant to the prosecution of a paternity action,[25] 2) institute a paternity action and 3) "prosecute" a paternity action, including full testimony on any sexual matters which could be relevant to the inquiry.

Since these are highly private matters, the inquiry again turns on whether there is a compelling interest thus being advanced. In *Wyatt v. U.S.* 362 U.S. 525, the compelling interest was the administration of the criminal justice system. But, no compelling interest is advanced here.

Nor does the disclosure of illegitimacy to the Welfare Department at the time of an application for AFDC constitute a waiver of the privacy claim; it is under strict confidentiality and for the limited purposes of an AFDC application.

Department of Health violated the constitutional right of privacy, (preliminary injunction denied, 364 F. Supp. 536) and *Davidson v. Dill* 503 P.2d 157 (Colo.Sup.Ct. 1972) holding that privacy prevented dissemination of arrest records, where there was a later acquittal.

[24] See Affidavit of Katherine Lopes, A. 53-4.

[25] See, generally, Transcripts printed as an Appendix to the Children's Brief.

C. The statute invades the mother's privacy by forcing her to bring a lawsuit.

In addition to requiring appellants to disclose the names of their children's fathers, Section 52-440b also forces them to "institute" and "prosecute" bastardy actions. The term "prosecute" is not defined by statute, but its ordinary meaning is to commence an action to enforce a claim at law and to follow it to an ultimate conclusion, *Black's Law Dictionary* (4th ed., 1957) p. 1385 (citing *Service and Wright Lumber Co. v. Sumpter Valley Ry Co.* 81 Ore. 32, 152 P. 262, 264). Section 52-440b requires, then, that the mother of an illegitimate child bring a lawsuit against the man she believes to be the father, and to pursue it to an ultimate judgment whether successful or not, and whether or not she believes her family's interests will be thus advanced. No other Connecticut statute requires such action of any person.

The mother of an illegitimate child may wish not to "prosecute" a paternity action for a variety of reasons. One of the affidavits of record is from a woman who declined to do so for, inter alia, religious reasons (A. 44-5). For several of the women, the action might, under Connecticut practice have been abated as a harassment because the fathers already had signed acknowledgements of paternity, (A. 39, 40, 46) see *Hatch v. Spofford* 22 Conn. 485 (1853) and *Gaul v. Baker* 108 Conn. 173, 143 Atl. 51 (1928). Even if not abated, these actions would be at least a waste of court resources and at most possible grounds for an action for malicious prosecution. For others, the statute of limitations had already run, giving the putative father a valid defense; (A. 38, 52). One of the named appellants feared for her own mental stability if compelled to bring an action and testify (Dorothy Poe, A. 48). The other was reasonably certain the father would break off

his relationship with the child and would probably flee the jurisdiction making such an action a useles act, (Sharon Roe, A. 51).

Whether or not a given mother declined to bring an action for these reasons, there are always hazads in litigation to establish paternity; see *Gomez v. Pere* 409 U.S. 535. The most obvious is the possibility of a judgment for the defendant, which would prevert the child from receiving any benefits from the father at any time, a result which does not result from leaving the issue unclear. Compare *Ruocco v. Logiocco* 104 Conn. 585, 134 A 73 (1926) with *Hartford B and T Co. v. Prince* 28 Conn.Sup. 348, 261 A.2d 287 (1969). And see the Affidavit of Katherine Lopes, *passim*, (A. 3-4). Apart from simple contract actions, the results of litigation are speculative, in any case, see e.g. Dickens, *Bleak House*. Nor are the Appellants under a fiduciary obligation to pursue possible financial advantage for their children; compare *Potter v. Hiscox* 30 Conn. 508 (1862) in which a guardian appointed by the probate court was found negligent for failing to pursue a contract claim running in favor of his ward. Even if they were, the noncriminal failure to perform any fiduciary obligation in Connecticut does not cary a penalty of imprisonment or fine.

This Court has held that states may not coerce their citizens to take affirmative action where the refusal to do so is an exercise of a First Amendment right, *West Virginia Board of Education v. Barnette* 319 U.S. 624 (1943). Appellants submit that their refusal to prosecute paternity actions, a choice not to petition the courts for redress of grievances, is an exercise of a First Amendment right as was the children's refusal to saute the flag in *Barnette*.[26] Thus the statute also violates

[26]The requirement that mothers "prosecute" an action is not purely symbolic even though the Commissioner of Welfare or a Town supporting the child has power to bring an action in his or its own name under C.G.S. Section 52-440a, because that section only applies to cases in which the governmental unit has a financial interest in the action, and because the mother is treated as a hostile witness in actions brought under it. Nor would a purely symbolic function justify the statute; *West Virginia Board of Ed. v. Barnette*, (*supra*).

appellants' constitutionally protected liberty in that they have a First Amendment right not to take the action it seeks to require of them.

D. The statute violates due process.

As noted above, Section 52-440b imposes upon all mothers of illegitimate children the obligation (1) to disclose the name of the child's putative father and (2) to "prosecute" an action which will legally determine whether he is in law the father. If she does not do so, an official is empowered to file a petition in Circuit Court against her. Nothing in the statute prevents its use against a rape victim, or any woman who cannot identify the father. Nor does the statute exclude instances in which the child's best interests dictate that the father not be sought, or those in which the child's best interests are unclear.

The District Court concluded that it could not assume that the statute would be applied "woodenly", thus giving the trial judges unbridled discretion to decide when to apply it.[27] The Court made no attempt, to define the circumstances in which the statute might or could not be used, 365 F. Supp. 65, 74 n. 14.

[27]Connecticut permits removal of a child from the parent's custody if the parent is found to have neglected the child. "Neglect" is defined as:

> (A) Child may be found "neglected" who (a) has been abandoned or (b) is being denied proper care and attention physically, educationally, emotionally or morally or (c) is being permitted to live under conditions, circumstances or

Neither the statute nor the Welfare Department policy construing it, narrows its scope significantly; A. 72-92, 103-124. Nor do they provide standards for courts to use to narrow its scope. Nor does the mode of procedure adopted minimize the statute's impact on constitutionally protected areas.

Except for Section 52-440b, notice and the opportunity for hearing are prerequisites, under Connecticut law, for any proceeding interfering with the basic parental functions of control and custody of their children; see *Lewis v. Klingberg* 100 Conn. 201 (1923). Even where a petition of alleged neglect alleges an emergency situation requiring, for possible preservation of the child's life, immediate removal of the child from the parents' custody, hearing on the validity of such an

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association injurious to his well-being. C.G.S. Section 17-53.

Jurisdiction over petitions of alleged neglect is in the Juvenile Court. As Section 17-53 indicates, Connecticut does not make parental actions which are inimicable to a child's best interest financially a grounds for a finding of neglect. *In Re Stuart* 114 F.2d 825 (D.C. Ct.App. 1940), a mother was charged with neglect because she had deprived herself and her child of support payments rather than agree to a court order permitting the child's father the right to visit. The Court of Appeals reversed a finding of neglect based largely on her actions which had demonstrably deprived both herself and her child of the financial ability to lead the middle class life they had previously been accustomed to. The court, per Stephens, J, concluded:

> . . . .rights guaranteed by the Constitution (of parents) are not to be qualified either by legislative or judicial action having no reasonable relation to some purposes within the competency of the state. 114 F.2d 825, 832.

The experience in Circuit Courts subsequent to the District Court decision is that "wooden" application is precisely what occurs. (See Transcripts collected in the Appendix to the Children's Brief).

emergency order is held within ten days if the parent requests it. See C.G.S. Section 17-62(b).[28]

Where sensitive family issues are infringed, due process requires an individualized hearing to determine whether a proper purpose is advanced by the regulation of the particular family:

> Specifically, we must decide whether, considering the private interest affected and the governmental interest sought to be advanced, a hearing must be provided to one who claims that the application of some general provisions of the law aimed at certain abuses will not in fact lower the incidence of those abuses but will instead needlessly harm him. Cf. *Reed v. Reed* 404 U.S. 71; *Vlandis v. Klein* ante. In short, where the private interests affected are very important and the governmental interest can be promoted without much difficulty by a well-designed hearing procedure, the Due Process clause requires the government to act on an individualized basis, with general propositions serving only as rebuttable presumptions or other burden-shifting devices. That, I think, is the import of *Stanley v. Illinois* 405 U.S. 645. *U.S. Department of Agriculture v. Murry* ____ U.S. ____, 37 LEd2d 767 (Marshall, J., concurring).

Parental control over a child's intangible interests, being a sensitive and constitutionally protected right, may not be infringed unless the state has first provided an individualized hearing before an impartial officer

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[28] Appellants are not here challenging the validity of the statute as enforced by guardians (who are not natural parents), because there must have been a decision, arrived at after due process hearing for a guardian to be appointed; C.G.S. Section 45-43. Nor do they challenge its application by guardians ad litem though it is hard to see when it would be so utilized; C.G.S. Section 45-54. And see *Clark v. Platt* 30 Conn. 282 (1861).

applying standards appropriate to the decision to be made; *Stanley v. Illinois* 405 U.S. 645.[29] And see *Bell v. Burson* 402 U.S. 535 (1971). The state cannot avoid the necessity for an individual hearing by use of an administratively simple irrebuttable presumption; *Vlandis v. Klein* 412 U.S. 441 (1973); *Frontiero v. Richardson* 411 U.S. 677 (1973). Nor can it do so by arguing that the statute is intended to be less sweeping than it reads; *Shelton v. Tucker* 364 U.S. 479.

As noted above, the purpose of Section 52-440b is not clearly articulated by the statute or its legislative history. Nor do Welfare Department policies include

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[29]The defendant seeks to justify Section 52-440b as an exercise of the common law doctrine of *parens patriae*. That is to misread history. *Parens patriae* was developed as an equity doctrine to permit the King to control the actions of guardians in an individual case in which it could be shown that the guardian had abused his trust. In *Butler v. Freeman* 27 ENG. Rep. 204 (Chancery, 1756), the court found that it:

> has general right delegated by the Crown as 'pater patriae' [to] interfere in particular cases for the benefit of such who are unable to protect themselves.
>
> The doctrine was clearly and narrowly limited, as the Court found in *DeManneville v. DeManneville* 32 ENG. Rep. 762 (Chancery, 1804):
>
> the Law imposed a duty upon parents; and in general gives them a credit for ability and inclination to execute it. But that presumption, like all others, would fail in particular instances; and if an instance occurred, in which the father was unable or unwilling to execute that duty, and farther, was actively proceeding against it, of necessity the State must place somewhere a superintending power over those who cannot care of themselves; 32 ENG. Rep. 762, 767.

The current descendants of the *parens patriae* idea are, then, the neglect statutes and not a broad regulation of the roles of parents such as that attempted in Section 52-440b. The language of *Pierce v. Society of Sisters* is strikingly similar to that of the *DeManneville* case. This Court has refused to permit a broader view of *parens patriae* where it operates, as it does in Section 52-440b to deny due process; *In re Gault* 387 U.S. 1, 16 (1967).

standards to guide its use.[30] Nor has subsequent administration of the statute by the Circuit Courts evolved a construction sensitive to the constitutional rights involved.

The District Court upheld the statute by concluding that Connecticut had simply adopted the general policy of requiring all fathers to support their children, 365 F. Supp. 65, 74 n. 14. But the limited enforcement categories and absence of a similar program dealing with fathers of legitimate children belie that purpose. And the Commissioner has never articulated any such purpose, but has rather taken the position that the statute advances children's interests quite apart from any positive effect it may have on the state's finances. And finally, that formulation of the statutory purpose is to assume that the children's interests and the states interests will without conflict of interest, be advanced by uniform application of the support laws.

Where a statute implies the conclusion of fact on which its statutory purpose turns, the presumption may be erroneous, and the errors adversely affect an important interest, it violates due process; *Bell v. Burson* 402 U.S. 535 (1971); *Cleveland Board of Education v. LaFleur* ___ U.S. ___, 39 LEd2d 52. Appellants submit that the lack of individual hearing to determine the best interests of the child invalidates Section 52-440b just as the lack of a hearing to determine the reasonable possibility of a judgment being entered invalidated the Georgia "accident security" system in *Bell*.

The statutory presumption is distinguishable from legislative decisions to control and protect society

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[30]Conn. State Welfare Manual Vol. I Section P-3460 (A. 10-12). Compare with New Jersey Manual of Administration, Division of Public Welfare, Section 2287 (also set out in the Appendix to this Brief).

through such requirements as universal school attendance, vaccination or prohibition of child labor, because in these latter areas regulations affect all members of society and have only incidental effects on the rights of particular classes. See e.g. *Prince v. Massachusetts* 321 U.S. 158. Nor is Section 52-440b like statutes which, by the nature of their legitimate purpose, require an ultimately arbitrary line-drawing; *Labine v. Vincent* 401 U.S. 532. And see *Cleveland Board of Education v. LaFleur* ___ U.S. ___, 39 L.Ed.2d 52, 70-71 (Rehnquist, J. dissenting).

Section 52-440b is also constitutionally defective on another due process ground: it is far too broad. If a statute, incidentally regulating areas which may be constitutionally protected, is not carefully drawn to include only that area which the state has a legitimate interest in regulating and to exclude that which it does not, the statute must be found unconstitutional for overbreadth; *Shelton v. Tucker* 364 U.S. 479; *Roe v. Wade* 410 U.S. 113, 216 (Burger, Ch. J. concurring). The state may regulate the constitutional right of privacy only to the extent it has a compelling interest in doing so; *Roe v. Wade, supra.* See also *Talley v. California* 362 U.S. 60. The danger is that the overbreadth will permit infringement of important rights to go unchecked. In *Baggett v. Bullitt* 377 U.S. 360, 373, the Court held that "well-intentioned prosecutors and judicial safeguards do not neutralize the effects of a vague law." Neither do they neutralize the effects of an overly broad one. When a statute is either vague or excessively broad there is danger that the law will be applied to persons, such as Appellants, whose behavior is constitutionally protected, although the statute could constitutionally be applied to others within its theoretical reach. By leaving the courts or administrative agency without a standard for application, 52-440b opens the door to arbitrary and

discriminatory enforcement. That has already proven the case.

Thus the Court has held that "laws must provide explicit standards for those who apply them"; *Grayned v. City of Rockford* 408 U.S. 104, 109 (1972). The failure of a statute to provide explicit standards constitutes a violation of Due Process. See *Giaccio v. Pennsylvania* 382 U.S. 399 (1965). It is not sufficient for the courts and enforcement officers to adopt private standards for applying a statute; see *Ricks v. United States* 414 F.2d 1111 (D.C. Cir.Ct. 1968).[31]

The overbreadth of Section 52-440b has been delineated with regard to both of the statutory purposes in the discussion in Part II, *supra*. What is definitive for determination of validity under Due Process, however, is the lack of standards to guide its application. The lack of standards becomes glaring when viewed in connection with the state's interest in recoupment or conversely with its interest in promoting the welfare of children.[32] Indeed, only if the statute is

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[31] Appellants attacked Section 52-440b as unconstitutional on its face and as applied to them; Complaint, *passim* (A. 5) Affidavits, *passim* (A. 36-54). The District Court found the statute valid on its face, certified it as a class action and dismissed the action. This is thus not a situation comparable to that in *Broadrick v. Oklahoma* 37 L.Ed.2d 830 (1973), in which those who attacked the statute had no standing to make an overbreadth argument because their activities were unquestionably within the scope of a valid regulation. Appellants here, and the class they represent are being threatened with petitions which not have been brought under a properly narrow statute.

[32] In New Jersey, which has a similar statute, there are explicit standards contained in regulations to determine whether it is in the best interests of a child that a paternity action be brought on its behalf. (footnote 26 *supra*, p. 52). Since the regulations make this an agency determination, it is subject to the general fair hearing requirement; N.J. Admin. Code 10:81 -2.18. Conn. State Welfare Manual Vol. I Section P-3460 nowhere indicates that the children's or parents' best interest have any bearing on the decision whether a paternity action should be brought or whether a given mother should be compelled to divulge.

punitive does the lack of standards serve its purpose. And the statute lacks procedures designed to elicit the information which would be relevant to a decision on individual cases, under either of the two ostensible purposes.

Appeal is not a viable means of rectifying violations of the constitutional rights infringed by Section 52-440b. The damage to those rights occurs no later than the denial of a mother's claim of privilege. The penalties are so severe and so clearly opposed to the children's interests as to cause most if not all mothers who are attempting to protect their children to forego their own claims. And Connecticut's appeal procedures are notoriously slow and cumbersome; see e.g. *Ralls v. Manson* 1 Conn. Law Times 124 (D. Conn. No. H-205, 1974).

Furthermore, Connecticut fails to provide for the appointment of counsel to mothers facing petitions under Section 52-440b, much less for appeals. Since the mother could spend up to a year incarcerated as a result of a petition brought under the statute, the court hearing under Section 52-440b is a critical one requiring appointment of counsel; *In re Gault* 387 U.S. 1 (1967); *Argersinger v. Hamlin* 407 U.S. 25 (1972). The Circuit Court lacks power to appoint counsel in other than criminal matters; see C.G.S. Section 54-81a.

Section 52-440b is thus so strikingly deficient in its lack of standards and procedures designed to limit its application to those instances in which infringement of constitutional rights is justified by a compelling interest, that it violates procedural Due Process.

E. The state had other, less drastic means, available to safeguard the interests of illegitimate children.

An invasion of constitutionally protected privacy will not be sustained even where the purposes for the invasion are legitimate if there is available to the state an alternative means of fulfilling that purpose by means less drastic or sweeping than those chosen; *Eisenstadt v. Baird* 405 U.S. 430 (1972); *Cleveland Board of Education v. LaFleur* ___ U.S. ___, 39 L.Ed.2d 52. Appellants recognize that there are instances in which the need to know the identity of the child's father may be a compelling interest of the child such as to justify requiring the mother to divulge such identifying information as she has about him. A child could, for example, have a rare disease which would be treatable if there were more information available about its genetic make-up. Such situations are not common, but Appellants concede that under those circumstances the state might, constitutionally, adopt some measures designed to safeguard such compelling interests of the child.

Such a statutory scheme, to be valid, would differ from Section 52-440b markedly. First, it would define its purposes clearly and adopt classifications and procedures rationally related to that purpose. Second, it could provide for action only by an individual or agency which could not be in conflict of interest with the child, rather than through the Commissioner of Welfare.[33] Third, it would provide that any necessary

[33]It is interesting to note the Commissioner's great concern for possible conflicts of interest between mothers and children, when he shows no such concern for possible conflicts between his own financial interests and the best interests of children. If one is to make assumptions about conflicts it would, on the whole, be safer to assume the parents to be less likely to be conflicted. Everyone would agree, for example, that a parent is

hearings would be held in a confidential setting such as the juvenile court, rather than in a public setting such as the Circuit Court. Fourth, it would provide for appointment of counsel for each of the parties to the proceeding. Finally, it would authorize punitive sanctions only if necessary to protect the child's compelling interest and where the sanctions demonstrably related to it.

In requiring mothers of illegitimate children to disclose the names of the putative fathers and to file and pursue paternity actions regardless of the consequences, Connecticut has taken over a parental function as basic to the concept of ordered liberty as any. It has done so without explicit and honest justification, in a drastic and sweeping fashion, and without any procedural safeguards whatever. And it has failed to produce any evidence that the statute has had any positive effect on any policy it claims to be pursuing. It is plainly an unconstitutional invasion of the families' privacy. .

CONCLUSION

For each of the reasons detailed above, the Court must reverse the ruling of the three-judge District Court

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more fit to make financial decisions for a child than is a bank to whom the parent owes money. But the Commissioner of Welfare stands in precisely the same relationship to the child as does such a bank.

and declare C.G.S. Section 52-440b unconstitutional and void. A remand in light of applicable constitutional principles may also be in order. Appellant mothers respectfully urge reversal.

Respectfully submitted

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APPENDIX A

Connecticut State Welfare Department Manual Vol. 1
Social Service Policies–Public Assistance

NEED REQUIREMENTS AND THE ASSISTANCE REPORT

Relative Support–AFDC Absent Parent Cases 3919

3919 *AFDC Absent Parent Cases*

1. Absence from the home may result from desertion, divorce or legal separation, involuntary separations occasioned by such circumstances as hospitalization, imprisonment or service in the Armed Forces.

   If continued absence of a parent from the home is given as a reason for the child's deprivation of parental support or care, the decision with respect to whether the absent parent should return rests with the family. The responsibility of the absent parent for support, however, is a part of the determination of eligibility and the Department has an obligation to assist in securing support.

   a. The mother who has applied for or who is receiving assistance is the *first* source of information.

   b. If the father's address is known, the worker will offer an opportunity for an interview.

2. The policy of the Department with respect to absence is:

   a. To emphasize that the rights of the individual families are respected in terms of what they want for themselves and their children but to explain that by law parents are required to support and care for their minor children to the best of their ability.

   b. To explain the supplementary nature of Public Assistance.

   c. To point out that steps will be taken to locate the father to determine his ability to support and help his children.

   d. To advise that when it is necessary to refer the case to the to the Resource Unit court action will be taken to determine the amount of support.

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Connecticut State Welfare Department Manual Vol. 1
Social Service Policies–Public Assistance

NEED REQUIREMENTS AND THE ASSISTANCE PAYMENT

Relative Support–AFDC Absent
Parent Cases–Procedures P-3919

P-3919 *Procedure Regarding Support–AFDC Absent Parent Cases*

1. Both State and Federal Law require that the Department notify the appropriate law enforcement official when assistance is furnished to children who have been

deserted or abandoned by a parent, whether the parents' address is *known* or *unknown*. Since this is a condition of eligibility, if the applicant or supervising relative in the active case refuses to have notification sent, the case is denied or discontinued, whichever applies.

NOTE: Parent refers to either the mother or the father, natural or adoptive. For the out-of-wedlock child, the father is limited to the acknowledged or adjudged father.

2. *Notice shall not be required* when it is established that the parent is:

   a. Incapable of providing support because;

      (1) he is receiving public assistance

      (2) he is in a penal or mental institution

   b. Currently contributing to the fullest extent possible;

      (1) There is no substantial change in the parent's circumstances since the last Court determination of ability to support

      (2) It is determined by a court or Family Relations Division of a Court that the parent's income and resources are so limited there is inability to contribute

   c. Divorced from the applicant by means of a divorce obtained in a Superior Court in Connecticut–

      In these cases, the Resource Worker at intake obtains the necessary information (date of divorce, court, amount of support order if any and whether his support payments are up to date). He then notifies the Family Relations Division of the appropriate Superior Court by letter advising the court of the granting of assistance to the applicant.

Revised 2-11-70

3. *Referral to Family Relations Division of Circuit Court*

   When the address of the absent parent is known or unknown, the applicant or supervising relative is required, as a condition of eligibility, to either go to the Family Relations Officer or the Circuit Court and file a complaint for nonsupport *or* must furnish the Department of Welfare with the information regarding the absent parent. When the supervising relative chooses to give the Department the information the worker completes Form W-348A, "Absent Parent Information Sheet" and W-348C, "Applicant's Statement of Non-Receipt

of Support", in triplicate, and sends the original copy to the Circuit Court, one copy to the Resource Unit and the third copy is filed in the case record. The information given to the Family Relations Officer will enable him to determine what action is to be taken regarding nonsupport and to request the Prosecutor of the Circuit Court to issue a warrant for arrest if the facts given so indicate. This includes a divorced parent whose divorce was obtained in another state. Verification of the visit to the Family Relations Court if this is the method the supervising relative chooses to pursue, is required by telephone, in writing, or by the card given to the applicant by the Family Relations Officer. When the Resource worker obtains verification, he will refer the information to the worker for documentation in the case record.

If the supervising relative has been to the Circuit Court or has furnished the Welfare Department with the information regarding the parent within 30 days previous to applying for AFDC, and there has been no change in circumstances, she is not required to do so again. However, the Resource worker will verify, by telephone or in writing, that she has been to the Circuit Court within this time, or the information has been furnished to the Department.

In a case where the supervising relative refuses to name the putative father the above procedure does not apply. However, if she is unwilling to name the putative father she is informed that she is subject to be cited to appear before any Judge of the Circuit Court, be compelled to name putative father and to institute an action to establish paternity of the child.

When an application is denied or withdrawn, after referral has been made to the Family Relations Division of the Circuit Court, Form W-348B is sent to Resources which will in turn notify the Circuit Court stating the reason for the denial.

Revised 4-25-72
Effective 10-1-72

NOTE: There may be active cases in which at the time of application for Public Assistance, the parent may have been incapacitated or institutionalized. Therefore, referral to the Family Relations Officer would not be appropriate. However, subsequently, the parent may get well, return to work and separate from the supervising relative. In case situations of this type, the worker is responsible for informing the supervising relative that as a condition of continuing eligibility, she must go to the Family Relations Officer to file a complaint for nonsupport or she must furnish the Welfare Department with the informa-

tion regarding the father. If the supervising relative has refused to name the putative father this is not required.

4. *Address of Parent Known*

When the award is granted, the Form W-348B is sent to the Family Relations Division of the Circuit Court to inform them of:

1) the case name and number

2) the amount of the award

3) the effective date of the award and

4) to establish an effective date for a Central Accounts Receivable Account

5. *Address of Parent Unknown*

a. If the applicant is unable to provide the current address, in addition to the worker instructing the applicant to go to the Family Relations Division of the Circuit Court or furnish the Welfare Department with information about the father, the Resource worker refers Form W-348 to the Location Unit of the Division of Central Collections of the Department of Finance and Control, after all efforts have failed to produce an address, by checking the following sources:

1) the parents of the absent parent

2) other relative

3) former employers

4) telephone and city directories

Revised 4-25-72
Effective 10-1-72

b. Upon receipt of the Form W-348 appropriately completed the Location Unit of the Division of Central Collections of the Department of Finance and Control continues the investigation by clearing with:

(1) the Division of Unemployment Compensation of the State Labor Department

(2) the Department of Motor Vehicles

(3) the Connecticut State Police Bureau of Identification

c. The Location Unit Supervisor of the Division of Central Collections of the Department of Finance and Control will notify the District Resource Worker when the parent is located, and the Resource Worker will instruct the supervising relative to take

action in the appropriate court as a condition of continuing eligibility and follows up within a reasonable time.

(1) Supplementary reports will be submitted by the worker to the District Resource Unit on Form W-109 when there is new information or additional activity which is pertinent to the situation. Additional information about the absent parent which is secured in subsequent contacts with the spouse or collateral sources which gives more complete background information on the parent will be transmitted by the worker to the District Resource Unit, a copy of which will be mailed by the Resource Worker to the Division of Central Collections of the Department of Finance and Control.

(2) The Resouce Worker will make the referral to the Division of Central Collections of the Department of Finance and Control by means of Form W-348, "Notice of Deserting or Absent Parent". The Resource Worker will obtain information to complete Form W-348 from the case record, Social Worker or directly from the recipient of assistance, when necessary.

(3) The Division of Central Collections of the Department of Finance and Control will be responsible for clearing with appropriate agencies for information concerning the whereabouts of the parent or alleged parent and for advising the District Resource Unit of the results.

Revised 2-11-70

(4) The Division of Central Collections of the Department of Finance and Control takes appropriate action on arrest warrants or referrals from the Superior Court for support action. Cases on which there is no outstanding arrest warrant are referred to the Circuit Court for action.

d. In those cases where there is a pending divorce or pending legal separation the Resource Worker

initiates support by sending a Form W-756 "Court Referral" to the Attorney General. When the divorce or legal separation is finalized and an order of support entered, the Resource Worker makes a referral to the Domestic Relations officer of the Superior Court or if the Superior Court will refer the matter to the Circuit Court for enforcement of support.

In all out-of-state cases where the address is known the Resource Worker refers the supervising relative to the Bureau of Support–Court of Common Pleas for a URESA proceeding.

Revised 2-11-70

Transmitted by Departmental Bulletin
No. 2413, WSS #1457

New Jersey Manual of Administration, Bureau of Assistance

Manual of Administration 2287.3-2287.5
Bureau of Assistance

Part II The Individual and Public Assistance

2200 Determination of Eligibility Factors Other Than Need–Factors Applicable in ADC Only

2287. *Child Born Out of Wedlock (Cont'd)*

.3 b. His financial capacity to contribute to the support of the child shall be evaluated.

However, voluntary contributions by the reputed father do not of themselves establish paternity, nor can the continuance of such voluntary support be enforced in the absence of the legal establishment of paternity (filiation proceedings).

c. Where there is a voluntary admission of paternity, it is desirable to have the admission reduced to writing whenever possible. (Refer to 2828. concerning written acknowledgement of paternity as establishing entitlement to OASDI benefits.)

.4 Legal Determination of Paternity (filiation proceedings)

a. It is to the advantage of the child that paternity be legally established since:

1) His support by the father as well as the mother becomes legally enforceable;

2) It may have bearing on his right of inheritance from his father (in certain states other than New Jersey);

3) It may have bearing on such financial benefits as OASDI, servicemen's dependents' allowance, etc.;

4) His identity is established and every child has a right to know his full parental and familial background.

b. Therefore the basic policy shall be to initiate filiation proceedings in respect to every "out-of-wedlock" child except as noted below.

[See 2952. Filiation Proceedings]

.5 Exceptions to Requirement for Filiation Proceedings

Exception to the basic policy may be made when, in the judgment of the welfare board,

based upon disclosure of full information by the ADC recipient, the presenting situation is one in which the disadvantages to the child and his parents outweigh the social and economic advantages that might be accomplished through filiation proceedings. Illustrative situations include the following:

New Jersey Department of Institutions and Agencies, Transmittal Letter #79, Page Date 11/65, Replaces Page Dated 7/62.

a. An older child whose reputed father has not been seen or heard from over a period of years, so that paternity would be hard to prove;

b. A reputed father who is married, has legitimate children to support, and such action would cause family discord or result in deprivation to the legitimate children.

.6 Procedures

a. Unless the welfare board determines that an exception should be made, as provided in .5 above, filiation proceedings shall be initiated either by the mother or should she refuse by CWB as provided in 2952. The CWB shall fully inform the mother about the policy, the reasons for it and shall secure all information available to her which she is willing to provide concerning the identity and whereabouts of the reputed father.

b. When a mother whose application has been approved with the understanding that filiation proceedings are to be initiated later decides she prefers to have her case closed, her wishes shall be respected and no court action initiated.

c. If in an action brought by CWB the mother fails or refuses to provide information leading to the identification of the reputed father to the extent that the court upon examination finds her to be in contempt, the needs of the mother shall be deleted from the grant. (Financial Assistance Manual 201. e. 2) (a).

In any case when the mother of an out-of-wedlock child decides not to apply or requests case closing as in b. above, she shall be informed about other agencies in the community which may be able to help her make appropriate plans. Direct referral service should be offered to her.

New Jersey Department of Institutions and Agencies, Transmittal Letter #129, Page Date 5/73, Replaces Page Dated 7/62.

2900 Other Agency Responsibilities–Legal Procedures

2952. *Filiation Proceedings*

Title 9, Chapter 17 of the Revised Statutes as amended by Public Laws of 1962 authorizes the county welfare boards to initiate proceedings to establish paternity and responsibility for support of a child born, or likely to be born, out of wedlock when such child is, or likely to become, a recipient of Assistance for Dependent Children.

(This authority does not obviate the use of the provisions of Title 9, Chapter 16 of the Revised Statutes under which the mother of the child can bring action and file a complaint in her own name to establish paternity and responsibility for support.)

.1 Effect on Eligibility for ADC

Title 9, Chapter 17 (R.S. 9:17-2) specifically provides ". . . . that the initiation of proceedings under this Chapter shall in no wise be deemed a condition precedent nor a deterrant to the granting of assistance or relief under any law of this State to persons otherwise eligible therefor."

[See 2287. for basic policy on eligibility]

.2 Courts Having Jurisdiction

Such proceedings shall preferrably be initiated in the county juvenile and domestic relations court, but may be initiated in a municipal court

in accordance with local practice.

.3 Parties to the Action

a. A complaint under Title 9, Chapter 17 should be filed in the name of the CWB by the director or other duly authorized representative. The complaint will normally be filed against the reputed father as identified by the mother.

b. There may be cases where the mother refuses, or claims inability, to reveal the identity of the reputed father. In such cases a complaint may be filed naming the defendant as follows: "John Doe, reputed father of (name of child), said name John Doe being fictitious". Such a complaint must be accompanied by an Affidavit of Inquiry made by the CWB director or other duly authorized representative, stating the mother's refusal or inability to identify the reputed father, and that other diligent inquiry has failed to reveal the identity. The court can then hold an examination of the mother and may compel disclosure of the name of the reputed father.

New Jersey Department of Institutions and Agencies, Transmittal Letter #41, Page Date 7/62.

.4 Procedure

a. Normal procedure contemplates that after the complaint is filed, and an examination held as required for disclosure of identity of the reputed father, a warrant will issue against the reputed

father so that when he is personally served he may be subject to the jurisdiction of the court. This is followed by a hearing where testimony is given by the parties, on the basis of which the court decides the issue of paternity.

b. If the court decides that the person charged is the father, an Order of Filiation is made which also specifies the support to be paid by the father for the maintenance of the child, and ". . . . the sum to be paid for the sustenance of the mother during confinement." (R.S. 9:17-2)

c. There will be cases where the reputed father admits paternity and agrees that he will not contest the entry of an Order of Filiation. Such action can be encouraged by CWB interview with the reputed father before initiation of filiation proceedings. In such cases, with the cooperation of the court, the procedure may be simplified in that the issue of paternity and responsibility for support can be adjudicated without issuance of a warrant or formal hearing.

.5 Person or Agency to Receive Payment of Order

See 2320.7 for basic policy in respect to support orders.

Since the average period of continuing eligibility for ADC is relatively short it is recommended that Orders for Support be made payable to CWB only when no other arrangement is feasible or acceptable to the court.

New Jersey Department of Institutions and Agencies, Transmittal Letter #41, Page Date 7/62.

2200 Determination of Eligibility Factors Other Than Need–Factors Applicable in ADC Only

2287. *Child Born Out of Wedlock*

A child born out of wedlock is a child born to a mother who is unmarried; or, if married, by a man other than her husband.

.1 Eligibility

a. The eligibility of a child is not affected by the fact that he was born out of wedlock.

b. The initiation of proceedings to determine paternity and to establish the financial responsibility of the reputed father shall not be a pre-application requirement.

.2 Legal Responsibility of Parents

a. Parents of a child born out of wedlock are equally responsible for his support. To establish that this child is "needy" the ability of both parents to support the child must be determined. In proper circumstances, court action may be necessary to establish paternity of the father, and to obtain such support from the parents. [See 2320. and 2952.]

The possibility of court action shall be explained to the applicant during the application process.

b. Responsible parents of such a child as designated by law are

1) mother of the child,

2) natural father when paternity has been established by filiation proceedings, and

3) husband of the child's mother based on a legal presumption that he is the father of her child, unless and until otherwise determined by a court of competent jurisdiction.

.3 Reputed Father

a. When the reputed father voluntarily admits paternity, the child's needs should be discussed with him and an effort should be made to have him assume the role of responsible parent. [Refer to 2952.4c]

New Jersey Department of Institutions and Agencies, Transmittal Letter #129, Page Date 5/73, Replaces Page 7/62.

Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-6033

SHARON ROE and DOROTHY POE, on behalf of themselves and others similarly situated,

Appellants,

v.

NICHOLAS NORTON, individually, as Commissioner of Welfare of the State of Connecticut, and on behalf of others similarly situated,

Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

BRIEF OF CHILDREN OF APPELLANTS

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-6033

SHARON ROE and DOROTHY POE, on behalf of themselves and others similarly situated,

Appellants,

v.

NICHOLAS NORTON, individually, as Commissioner of Welfare of the State of Connecticut, and on behalf of others similarly situated,

Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

BRIEF OF CHILDREN OF APPELLANTS

QUESTIONS PRESENTED

1) Conn. Gen. Stats. §52-440b requires each mother of an illegitimate child on welfare to make public disclosure of the name of the child's putative father and to prosecute the father in a paternity action, presuming irrebuttably that disclosure and prosecution serve the child's interest. Does the failure of the statute to

provide a hearing on this issue deprive the child of his right to family privacy and autonomy without due process of law?

2) Does Section 52-440b deprive those illegitimate children who are poor of the equal protection of the laws by providing that only a poor child is subject to compelled disclosure and prosecution of his father without regard to the impact of compulsion on the child?

STATUTES INVOLVED

Conn. Gen. Stats. §52-440b provides:

> Compelling disclosure of name of putative father and institution of action. (a) If the mother of any child born out of wedlock, or the mother of any child born to any married woman during marriage which child shall be found not to be issue of the marriage terminated by a divorce decree or by decree of any court of competent jurisdiction, fails or refuses to disclose the name of the putative father of such child under oath to the welfare commissioner, if such child is a recipient of public assistance, or to a selectman of a town in which such child resides, if such child is a recipient of general assistance, or otherwise to a guardian or a guardian ad litem of such child, such mother may be cited to appear before any judge of the circuit court and compelled to disclose the name of the putative father under oath and to institute an action to establish the paternity of said child.
>
> (b) Any woman who, having been cited to appear before a judge of the circuit court pursuant to subsection (a), fails to appear or fails to disclose or fails to prosecute a paternity action may be found to be in contempt of said court and may be fined not more than two hundred dollars or imprisoned not more than one year or both.

For the text of other relevant statutory provisions, see Appendix to this Brief (hereinafter Br. App.).

STATEMENT

This action was brought by two mothers of illegitimate children on welfare to challenge the constitutionality of a Connecticut statute that authorizes certain officials to bring contempt citations against mothers of illegitimate children, requiring the mothers 1) to disclose to a judge of the circuit court the name of the putative father of their child, and 2) to institute and prosecute a paternity action.

Paternity actions in Connecticut are a means by which a support obligation may be imposed on an unwed father. Conn. Gen. Stats. §52-435a. They are civil actions and either party may demand a jury trial on the issue of paternity. Conn. Gen. Stats. §§52-438, 52-442. In the event the defendant is found guilty of being the father, he is charged with the support and maintenance of the child during the child's minority, although he is not accorded any corresponding parental rights by statute. Conn. Gen. Stats. §§52-442, 45-43. The convicted putative father may be incarcerated for failure to comply with court support orders and "shall be kept at hard labor," and he is not relieved of his debt upon release from jail. Conn. Gen. Stats. §52-443.

A mother who refuses to make disclosure or prosecute a paternity action may under the statute be found in contempt of court and fined not more than two hundred dollars or incarcerated not more than one year or both.

The statute establishes different enforcement mechanisms for different classes of children. The Welfare Commissioner may bring citations to compel disclosure with respect to children receiving public assistance, Connecticut's program of Aid to Families With Dependent Children (AFDC); a town selectman with respect to children receiving general assistance; and the guardian or guardian ad litem of a child with respect to children who are not on welfare. The Welfare Commissioner has declared it his policy to bring citations against every mother whose child receives AFDC and who refuses to make disclosure to him. Stipulations of Counsel, Single Appendix (hereinafter App. 56); Deposition of Caroline Packard (App. 81). By contrast, a guardian or guardian ad litem other than the mother may be appointed for the child only when a court determines that the interests of the child require such an appointment, Conn. Gen. Stats. §§45-43, 45-54, and is bound by fiduciary obligations to the *child.*

Each of the two mothers who brought this action had been cited to appear in court pursuant to the statute. They brought the action against the Welfare Commissioner on their own behalf and on behalf of their minor children, alleging that the statute violated privacy and due process rights and deprived them of equal protection of the laws. (App. 5-9.) The action was brought pursuant to 42 U.S.C. §1983 and sought both declaratory and injunctive relief. *Ibid.* It also sought the convening of a three-judge court pursuant to 28 U.S.C. §2281.

At the same time, another similar action was pending in the District of Connecticut, and the two actions were

ordered consolidated. (App. 13.) Upon consolidation, and after denying an application for a preliminary injunction, *Doe v. Norton*, 356 F. Supp. 202 (D. Conn. 1973), the court below on its own motion appointed counsel to represent the children of plaintiffs in both cases, in order to assure representation of what it saw as divergent interests of mothers and their children. (App. 29); *Doe v. Norton*, 365 F. Supp. 65, 69 (D. Conn. 1973). The children participated in the District Court, and the court deemed them "not only proper, but necessary parties". *Ibid.* Likewise, the court designated the action a class action, but divided plaintiffs into two subclasses:

"1) those mothers receiving AFDC assistance who refuse to comply with Section 52-440b; and

2) the illegitimate children of those mothers." *Ibid.* Although the plaintiffs had originally brought their action against the Welfare Commissioner as a representative of the class of all persons empowered to enforce the statute, the District Court did not certify a class of defendants.

The plaintiffs produced evidence in the form of affidavits from women who were cited into court or threatened with citation. Many of these women used affidavits in order to be able to testify pseudonymously and preserve their privacy. They detailed the harm they feared from disclosure, for themselves and their children. Their evidence about their individual situations was reinforced by evidence the children produced from Albert Jay Solnit, M.D., a child psychiatrist and psychoanalyst who is director of the Yale Child Study Center and President of the American Academy of Child Psychiatry (App. 63), and Edward F. Zigler, Ph.D., a psychologist specializing in child psychology who is Professor of Psychology at Yale, as well as former director of the Office of Child Development in the Department of Health, Education and Welfare.

(App. 125). Both experts testified to the disruption of families and the danger to the children's well-being that their training and clinical experience led them to predict enforcement of the statute would bring. The children produced in addition depositions from welfare department officials detailing the functioning of the statute.

The defendant produced statistics showing the incidence of illegitimacy in Connecticut.

The three-judge court on September 7, 1973, denied the application for a permanent injunction and dismissed the complaint. The court held that the statute did not invade a protected right of privacy by authorizing compelled disclosure in court, and ruled that it did not intrude "into the home nor any participation in interpersonal decisions among its occupants . . ." *Doe v. Norton*, 365 F. Supp. at 77, and therefore did not impinge on any rights of privacy, 365 F. Supp. at 77-78. The court also rejected plaintiffs' equal protection claim based on unequal enforcement of the statute, finding any discrimination "rational" to advance the interest of the State in recouping expenditures made on behalf of children on welfare. 365 F. Supp. at 82. Finally, it found no conflict between the statute and the Social Security Act, 42 U.S.C. §401 *et. seq.* 365 F. Supp. at 70-73.

Judge Newman concurred in the result. He thought it "evident" that the statute involved constitutionally protected privacy rights of the mother but found the statute constitutional "on its face," "in the precise sense that not every application of the statute would achieve an unconstitutional result." 365 F. Supp. at 84. However, Judge Blumenfeld writing for the court had recognized that plaintiffs had objected to the statute "as applied to them." 365 F. Supp. at 69.

This appeal by the plaintiff mothers followed. The children, although not appealing from the judgment in *Roe v. Norton*, argued below that the statute was unconstitutional as applied to them and support the position of the appellants here, on the premise that the interests of the children demand that the judgment be reversed.

SUMMARY OF ARGUMENT

1. Section 52-440b authorizes the State to compel the mother of an illegitimate child to identify and prosecute the father of that child. It thereby invades the family privacy and autonomy of the child, as well as that of the mother. The invasion threatens the most vital aspect of the child's right to family privacy: the continuity of the family and its relationships. The child's relationship with his father may be terminated as a result of the litigation; his relationship with his mother may be impaired; the disclosure may leave him a "father" he has not seen and does not know and weaken developing bonds with an adoptive father or stepfather.

The State's interest in its purse is plainly not the type of interest which justifies infringing this important right of the child, particularly where the prospects for collecting significant sums from the unwed father are slim, and the risk of harm to the child is great.

Nor can the State's interest in the well-being of children justify the functioning of the statute. For while purporting to safeguard the financial and psychological interests of the child, the State requires disclosure even when it would in fact harm the child. The statute thereby establishes an irrebuttable presump-

tion, contrary to fact, that disclosure and prosecution of a paternity action is always in the interest of the child. By denying the child a hearing at which he may prove that disclosure or prosecution would in fact be harmful, the statute denies the child due process of law.

2. Section 52-440b establishes one enforcement mechanism for children who receive welfare and a different, less onerous, mechanism for other children. In the case of a child who receives welfare, the power to enforce the statute is given to the Welfare Commissioner, who in fact proceeds against all mothers who refuse to make disclosure, without considering whether the proceeding will serve the interests of the child in a particular case. In the case of other children, however, the power to enforce the statute is given only to a guardian or guardian ad litem for the child. A guardian is appointed only when a court is persuaded the appointment will serve the child's interests, and the guardian has a fiduciary obligation to act in the child's interest in deciding whether to compel disclosure and prosecution of the father. Thus the interests of a non-welfare child are considered at two stages while those of the welfare child are not considered at all.

This distinction amounts to a legislative classification based on wealth, affecting the child's interests and family privacy. The State offers no plausible justification for affording a hearing to some children and denying it to those who receive welfare. Consequently, this statute deprives those illegitimate children who receive welfare the equal protection of the laws.

ARGUMENT

I.

SECTION 52-440b INVADES THE RIGHT OF CHILDREN TO PRIVACY AND AUTONOMY IN FAMILY LIFE WITHOUT PROVIDING ANY DETERMINATION THAT THE INVASION IS JUSTIFIED, IN VIOLATION OF THE CHILDREN'S RIGHT TO DUE PROCESS OF LAW.

A. Section 52-440b invades the right of children to privacy and autonomy in family life, which is a fundamental part of the liberty protected by the Fourteenth Amendment.

The statute at issue in this case authorizes the State to compel the mother of an illegitimate child to do two things: 1) to disclose the identity of the child's father in circuit court, and 2) to institute and prosecute a paternity action against the father.[1]

The statute threatens important rights of the mother with respect to childrearing and sexual privacy.[2] But

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[1] The authority to compel disclosure is given to the Commissioner of Welfare in the case of a child receiving public assistance, which is Connecticut's program for administering the federal program of Aid to Families With Dependent Children (AFDC); to the town selectman in the case of a child receiving general assistance; and to the child's guardian or guardian ad litem in all other cases. This distinction has serious consequences discussed in Part II of this brief.

[2] Plainly, as Judge Newman explained below, the constitutionally protected privacy of family life includes the interest of a mother in resisting compelled disclosure and prosecution of the putative father of her illegitimate child:

> "It is certainly an important aspect of child rearing for a mother to decide whether to secure legally some actual or potential financial benefit for her child at the expense of

the child suffers an even more serious invasion of his right to family privacy when the State compels his mother to disclose his paternity and to prosecute his father. The State forcibly alters the child's relationship with his mother and his father, without regard to the risk that altering these family relationships will cause more harm to the child than good. In addition, the State exposes to public scrutiny intimate details of the child's family history, without regard to the resulting legacy of humiliation and shame that the child may be left to endure. Finally, the State subjects the child to knowledge of facts about his parents, without regard to the possibly damaging impact of that knowledge on his psychological well-being. This threefold assault on the child's fundamental right of privacy is not justified by any substantial state interest, and therefore deprives the child of liberty without due process of law.

It is now established that the right of privacy to which the Constitution extends "special safeguards," *United States v. Orito*, 413 U.S. 139, 142 (1973),

> "encompasses and protects the personal intimacies of the home, the family, marriage, motherhood, procreation, and child rearing. Cf. *Eisenstadt v. Baird*, 405 U.S. 438, 453-54 (1972); *id.*, at 460, 463-465 (White, J., concurring); *Stanley v. Georgia*, [394 U.S. 557], at 568 [1969]; *Loving v. Virginia*, 388 U.S. 1, 12 (1967); *Griswold v. Connecticut*, [381 U.S. 479], at 486 (1965);

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fracturing an amicable father-child relationship or even of harming the child by inflicting upon it distressing knowledge such as incestuous parentage. Decisions on such matters would plainly seem to enjoy no less constitutional protection than the decision whether to educate the child at a public or private school. *Cf. Pierce v. Society of Sisters*, 268 U.S. 510, 45 S.Ct. 571, 69 L. Ed. 1070 (1925)." *Doe v. Norton*, 365 F.Supp. 65, 85 (concurring opinion).

> *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944); *Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942); *Pierce v. Society of Sisters*, 268 U.S. 510, 535 (1925); *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923)." *Paris Adult Theatre I v. Slaton*, 413 U.S. 49, 65-66 (1973).

The concept of family privacy embodies the fundamental notion that childrearing is, absent extraordinary circumstances, the business of parents and not of the State. As the Court recently said in *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972):

> "The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition."

Children, as well as their parents, have a strong stake in the preservation of the autonomy of their family lives from state interference. The child's interest in having his parents rather than the State make the crucial decisions concerning his family life is entitled to fully as much constitutional protection as other aspects of the right of privacy.

It is established that "neither the Fourteenth Amendment nor the Bill of Rights is for adults alone," *In re Gault*, 387 U.S. 1, 13 (1967), see *Tinker v. Des Moines School District*, 393 U.S. 503, 506-507 (1969), and that the protection of family life from state control is in large measure the right of the child as well as of his parent. *Levy v. Louisiana*, 391 U.S. 68, 71 (1968); *Prince v. Massachusetts*, 321 U.S. 158, 165-166 (1944); see *Keyes v. School District No. 1*, 413 U.S. 189, 247-248 (1973). (Powell, J., concurring in part and dissenting in part).

The Court has recently recognized both the importance of family relationships and the special

character of the child's interest in these relationships. In *Stanley v. Illinois*, 405 U.S. 645 (1972), the Court struck down a statute that abridged, without a hearing, the fundamental interest of a father in the care and custody of the illegitimate children he had "sired and raised," 405 U.S. at 651. In *Rothstein v. Lutheran Social Services*, 405 U.S. 1051 (1972), the Court remanded a case factually similar to *Stanley*

> "for further consideration in light of *Stanley v. Illinois, ante*, p. 645, and with due consideration for the completion of adoption proceedings and the fact that the child has apparently lived with the adoptive family for the intervening period of time." *Ibid.*

The Court recognized in *Rothstein* that the fundamental right of a father to care and custody of his natural child might be outweighed by his child's interest in membership in a different family. Family privacy and integrity, in short, is at least as much the right of a child as of his parent.

The reasons for extending special constitutional protections to family life apply as fully to children as to their parents. The special protection accorded family privacy stems in large measure from a recognition of the importance of the family to its members. The bonds between family members, especially between children and the parents who nurture them, have a strength to which the State must defer; courts and legislatures must recognize that, for example the rights to care, custody and the companionship of one's children are "far more precious [to parents] than property rights." *May v. Anderson*, 345 U.S. 528, 533 (1953). Moreover, in a society of families, the composition and conduct of one's own family affects every aspect of daily life and fundamentally shapes each person's life cycle. *See, e.g., Roe v. Wade*, 410 U.S. 113, 153 (1973); *Eisenstadt v. Baird*, 405 U.S. 438 (1972). As family life and family

relationships are vital to parents, so are they at least as vital to children, for whom the family is their entire universe.

As a theoretical matter, the autonomy of the family is a vital part of the freedom of association protected by the First Amendment, *Griswold v. Connecticut*, 381 U.S. 479 (1965), and the child has a vital stake in the continuity and autonomy of his family as a member of a "communit[y] . . . characterized by shared understandings and values." Tribe, "Forward: The Supreme Court, 1972 Term," 87 *Harv. L. Rev.* 1, 34 (1973). One principal reason for affording special protection to the family is that it serves as the primary agency for fostering important interests of the child. The Court has protected family autonomy against invasions which jeopardize the development of the child in matters of religion, *Wisconsin v. Yoder*, 406 U.S. 205 (1972), thought and expression, *Meyer v. Nebraska*, 262 U.S. 390 (1923), and individuality and autonomy as a person, *Pierce v. Society of Sisters*, 268 U.S. 510 (1925). Ordinarily, judicial protection of family autonomy is invoked in the service of these other interests. But in this case, the threat is to the continuity of the child's family itself, which is the foundation and prerequisite for all the other values protected by family autonomy. If the Constitution recognizes the fundamental role of the family in our society and in the advancement of important rights of the child, it must accord the child protection against State-sponsored dismemberment or disruption of his family.

The evidence in the record illustrates the kinds of disruption to which children's families are exposed when their mothers are subjected to state compulsion under Section 52-440b.

1. "A"[3] testified that she planned to marry the father of her illegitimate child. She testified further that

[3](App. 39). Appellants and other women who gave testimony in affidavit form used pseudonyms, which are indicated here by quotation marks.

her child's relationship with its father might be threatened if she were compelled to sue the father in a paternity action.[4] If "A" married the child's father, the child would be fully legitimated, a result a successful paternity action could not achieve. Conn. Gen. Stats. §45-274.

2. "Mary Brown," (App. 40) testified that she planned to marry a man who is not the father of her illegitimate child but who is acting as a father to the child and would be in a position to adopt the child after the marriage. For her to name the biological father and prosecute a paternity action would jeopardize the child's interest in being adopted and in avoiding the stigma of illegitimacy for the rest of its life. "Mary Brown" resists disclosure, therefore, in order to spare her child "the social opprobrium suffered by these hapless children. . . ." *Weber v. Aetna Casualty & Surety Co.*, 406 U.S. 164, 176 (1972).

Both "A" and "Mary Brown" have protected whatever interest their children might have in establishing their paternity by obtaining written acknowledgments of paternity from the children's fathers.[5]

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[4] The Department of Health, Education and Welfare has observed that "A's" plight is not unusual:

> ". . . Legal action taken by the parent to meet the agency's conditions may result in additional strains in relationships within the home, or may unwisely force the permanent severance of relationships with the absent parent." Handbook of Public Assistance Administration, Part IV, at 3422.5(2).

See also, Bridges v. Secretary, CCH Unemployment Ins. Rep. ¶16,480, at 2499-463 (E.D.N.Y. 1971).

[5] Such an acknowledgment accompanied by the mother's acknowledgment has, when filed with the Circuit Court, the force of a final judgment of paternity. Conn. Gen. Stats. §52-442a. Since no action need be brought when paternity is established by acknowledgment, the three-year statute of limitations does not apply.

Many other children are harmed in equally profound ways by this type of state intrusion into family privacy. Two experts in the fields of child psychology and child psychiatry gave uncontradicted testimony concerning the likely consequences to children of Section 52-440b's invasion of the autonomy of the family.[6] Dr. Edward Zigler confirmed Judge Newman's apprehension of the danger of "distressing knowledge", 365 F. Supp. at 85, of paternity:

> "The child's self-image will also be severely damaged when he knows who his father is where this knowledge brings home the fact of the father's failure to live in the home. A young child will assume that his father is absent because the child is unworthy in some way or because his father hates him." (App. 127).

Dr. Zigler went on to analyze the harm caused a child by compulsion of his mother in this intimate area of family life:

> "Particularly in strained situations such as father absent homes, it is important to a child for his mother to feel free and confident in her relationship with the child. State compulsion and intrusion into one aspect of that relationship—the information the mother imparts about the father—may be expected to leave a mother less sure of

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[6] Albert Jay Solnit, M.D., is a child psychiatrist and psychoanalyst who is director of the Yale Child Study Center and President of the American Academy of Child Psychiatry, as well as past-President of the American Psychoanalytic Association. (App. 63). Edward F. Zigler, Ph.D., is a child psychologist who is Professor of Psychology and Chairman-designate of the Department of Psychology at Yale, as well as former director of the Office of Child Development in the Department of Health, Education and Welfare. (App. 125).

herself as a mother. She will feel less in control of her relationship with her child; and as a result the child will feel less secure and sure of himself and who he is. Because the State is making an important decision about family life the mother, and hence the child, will also to some extent shift responsibility for parenting from the mother to the State, an effect which increases a sense of dependency on the State in both mother and child." (App. 128).

The court below rejected the claim that the statute interferes with the right of privacy, on the ground that the right of privacy protects certain activities relating to marriage and procreation but it does not protect information about those activities. 365 F. Supp. at 73-77. On this view, information about private conduct is protected only by the Fifth Amendment privilege against self-incrimination, and by non-constitutional common law evidentiary privileges.

As Judge Newman's concurring opinion makes clear, however, the constitutional protection of private conduct may also require protection of information about that conduct. 365 F. Supp. at 84-85, citing *NAACP v. Alabama*, 357 U.S. 449 (1958); *Bates v. Little Rock*, 361 U.S. 516 (1960). See also *Merriken v. Cressman*, 365 F. Supp. 913 (E.D. Pa. 1973). Moreover, even if mere information were outside the protection of the right of privacy, that would not dispose of this case. For §52-440b authorizes the State to compel the mother of an illegitimate child not only to disclose the identity of the father, but also to institute a paternity action against him. The mother is compelled to be not only a witness but also a plaintiff. Indeed, the compulsion of this hostile act by the mother against the father is one of the most important aspects of the intrusion of this statute on the privacy, and stability, of the child's family life.

It is now established that "where certain 'fundamental rights' are involved . . . regulation limiting these rights may be justified only by a 'compelling state interest,' . . . and that legislative enactments must be narrowly drawn to express only the legitimate state interests at stake," *Roe v. Wade*, 410 U.S. 113, 155 (1973); and that the right to privacy is one of these 'fundamental rights.' *Ibid.* See also *Stanley v. Illinois*, 405 U.S. 645, 651 (1972); *Stanley v. Georgia*, 394 U.S. 557, 564 (1969); *Kovacs v. Cooper*, 336 U.S. 77, 95 (1949) (Frankfurter, J., concurring). It is necessary, therefore, to analyze the state interests advanced in support of the statute and the means by which the statute purports to advance those interests.

B. The State purports to justify its invasion of children's rights to privacy and autonomy in family life by means of insubstantial interests and an irrebuttable presumption, depriving the children of liberty without due process of law.

The State advanced two distinct interests in support of the statute: that of the State, and that of the children. According to the District Court,

> In the absence of any legislative history, the court inquired and was informed that the scope of this statute was intended not only to protect the state's coffers but also to establish the paternity of all illegitimate children so that they might enjoy the long term psychological and economic advantages to be gained thereby.

365 F. Supp. at 73n. 10. (Citation omitted).

State court application of Section 52-440b has focused almost exclusively on the statute's function as a recoupment device, and has recognized that "[t]he primary purpose of the statute is to protect the State's coffers." *Norton v. Larracuento* (Br. App. 47a). Likewise,

in *Welfare Commissioner v. A. Ar.* (Br. App. 27a. Initials are used to protect privacy.), the court observed,

> "The State is entitled to be reimbursed for the money they expended for the support of the child. . . . That is all the State is interested in, the reimbursement. . . . If nothing can be worked out [to repay the State], you're going to have to go to jail."

The history of Connecticut's efforts to extract the names of putative fathers from the mothers of illegitimate children on welfare shows the primacy of the fiscal purpose. That history is detailed by the District Court. 365 F. Supp. at 71-72. Connecticut made disclosure a requirement of eligibility for welfare, first for entire families and then only for their mothers. *Doe v. Shapiro*, 302 F. Supp. 761 (D. Conn. 1969), appeal dismissed, 396 U.S. 488, rehearing denied, 397 U.S. 970 (1970); *Doe v. Harder*, 310 F. Supp. 302 (D. Conn.), appeal dismissed, 399 U.S. 902 (1970). This enforcement device snugly fits a fiscal recoupment rationale but is plainly incompatible with a state claim to protect the interests of the children it proposes to deprive of subsistence. See *Doe v. Shapiro*, 302 F. Supp. at 766. We will turn, then, to this primary purpose, "the protection of the State's coffers."

1. The State's financial interests are too insubstantial to justify invasion of important constitutional rights of children.

The State's fiscal claim is simply put: fathers, including adjudicated fathers of illegitimate children, are obligated to support their children. The State supports illegitimate children who receive AFDC, and therefore it is entitled to reimbursement from the father for its expenditures on behalf of the dependent illegitimate child. This statute facilitates that reimbursement. But this

claim must be weighed against the claim of mothers and children to family privacy, and to freedom from disruption of family life.

The Court has in a long series of equal protection decisions rejected rationalizations that a particular state policy saved the State money as an adequate ground on which to uphold a statute which worked a hardship on a particular class of people or penalized exercise of a constitutional right. Thus in *Graham v. Richardson*, 403 U.S. 365 (1971), and *Shapiro v. Thompson*, 394 U.S. 618 (1969), very substantial economies were held inadequate to justify the discrimination against aliens and new residents, respectively. See also *Rivera v. Dunn*, 329 F. Supp. 554 (D. Conn. 1971), affirmed 404 U.S. 1054 (1972). In *Harper v. Virginia Board of Elections*, 383 U.S. 663 (1966), fiscal gains were held inadequate to withhold from the poor access to a right deemed "fundamental." So here the State seeks to protect its coffers by invading the rights of mothers and children to family privacy. As the State's fiscal claim does not justify invasion of the right to travel or to vote in state elections on an equal basis with those who can pay a poor tax, so it cannot justify deprivation of the fundamental right of privacy.

This point is particularly clear with respect to children, as distinct from mothers who resist disclosure. The children are not in a position to advance the State's fiscal interest by giving information, and they depend on the State for their subsistence through no choice of their own. As to them, the State has recognized and asserted below its paramount interest in protecting their well-being. See, *e.g.*, *Wyman v. James*, 400 U.S. 309 (1971). The State cannot simultaneously

claim a right to undermine that welfare in the interest of the State's coffers.

Moreover, the practical effect of Section 52-440b on the State's interest is so slight as to defy recognition as a justification for the statute. Disclosure of the father's identity is not likely to produce support payments in most cases. Very few fathers of welfare children have sufficient resources to provide support payments. And even those who can pay are likely to evade enforcement of new support obligations. In AFDC cases involving married fathers, only one-fifth of the fathers contributed support during 1971. U.S. Department of Health, Education and Welfare, Findings of the 1971 AFDC Study, Part III, DHEW Publication No. (SRS) 73-03759 (hereinafter AFDC Study), table 6. It is unlikely that in the case of unmarried fathers the State could match even this unimpressive collection record.

It appears, moreover, that in most cases the mother of an illegitimate child gives the welfare department the name of the child's putative father. Deposition of Joseph Mancini (App. 112). Those who refuse, as the affidavits submitted in the District Court show, frequently do so in part because of the unsavory, unstable or unreliable nature of the putative father (App. 37, 45-46, 51). These fathers may be expected to be the least likely subjects of successful support proceedings.

Realistically, then, the State has a weak claim of injury to its fiscal integrity. It would reap greater financial rewards by using its limited resources to collect support from absent husbands, rather than from absent illegitimate fathers. In fact, however, the State does not pursue absent husbands with the vigor reserved for unknown putative fathers. Mothers of legitimate children cannot be compelled by statute to institute a support action, while Section 52-440b compels prosecution of a paternity adjudication. Conn. Gen. Stats.

§52-442. The State therefore claims fiscal necessity with respect to a requirement it does not apply to mothers of legitimate children. This discrimination diminishes the plausibility of the State's fiscal claim, and suggests that the statute may be a penalty for giving birth to an illegitimate child as much as a financial measure. To the extent it is punitive, the punishment falls on the child at least as much as on his parents, and this Court has firmly and unmistakably forbidden vicarious punishment of illegitimates for the supposed sins of their parents. *Weber v. Aetna Casualty & Surety Co.*, 406 U.S. 164, 175-176 (1972); see *New Jersey W.R.O. v. Cahill*, 411 U.S. 619 (1973).

Even were the State's fiscal claim sufficient in principle to justify intrusion into the rights of mothers and children, Section 52-440b fails the "least drastic means" test with respect to the State's fiscal claim. Compulsion is permitted by the statute and sought by the Commissioner in a variety of situations in which benefit to the State is unlikely or even impermissible while harm to the children and their mothers is quite likely. For example, as Judge Newman pointed out below, the statute permits compelled disclosure of the father's identity, even if the statute of limitations for a support action has run. 365 F. Supp. at 86. The statute permits compelled disclosure even if the mother can show that the putative father is in a category of men who virtually never provide support, such as prison or mental hospital inmates. See AFDC Study, table 16. In short, the statute permits invasion of fundamental privacy rights of children and their mothers in instances where the invasion will not even advance the state fiscal interest asserted to justify it. Viewed as a fiscal measure, therefore, the statute "needlessly, arbitrarily, [and] capriciously impinge[s] upon this vital area of . . . constitutional liberty . . ." *Cleveland Board of Education v. LaFleur*, ___ U.S. at ___, 94 S. Ct. at 796, and is unconstitutional.

If Section 52-440b is to be sustained, then, it must be on the basis of the secondary statutory purpose asserted below: the *parens patriae* interest of the State in the children subject to the statute.

2. The State's interest in the well-being of children cannot justify its invasion of children's rights.

The District Court accepted the State's contention that "[i]nstead of operating to the disadvantage of children born out of wedlock, the statute operates to their benefit." 365 F. Supp. at 79. Mothers who resist naming and prosecuting the putative fathers of their children, in this view, harm those children, while state compulsion secures "long term benefit . . . to the children by the early establishment of their paternity. . . ." 365 F. Supp. at 80. In fact, however, analysis of the potential benefits and harms to children from compulsory disclosure and prosecution shows that the interests of children vary with their individual circumstances. Most children are more likely to be harmed than helped by enforcement of the statute against their mothers.

a. The interests of the child are not served by the statute in many cases.

Financial Interests

Compulsory disclosure and prosecution of the father may conceivably produce financial benefits for the child in the form of present support payments or future benefits from insurance or other sources. In many cases, however, the likelihood that the child will in fact realize any net financial benefit from the proceeding is negligible.

The child will realize no present benefit from a successful paternity adjudication if his father cannot be compelled to make support payments, a situation which exists if the father is impecunious, eludes efforts to collect support,[7] or is not amenable to process[8] or successful prosecution. Indeed, even if support payments are forthcoming, the child will realize no financial benefits unless the father can be compelled to make support payments on his behalf which exceed the amount he and his mother receive in welfare benefits. This follows from the fact that the family welfare allotment will be reduced in precisely the amount of any support payments. See *Norton v. Larracuento*, Br. App. at 40a.

With respect to the various benefits that may be payable at some future time, such as Veterans' benefits, the child can ordinarily establish his rights by proving paternity at the time when payments fall due even if there has been no prior adjudication of paternity.[9] See

[7]The AFDC Study discloses that even among fathers whose whereabouts were known, lived in the same state as the mothers receiving AFDC, and were not institutionalized, two-thirds paid no monthly support whatever. AFDC Study, table 16.

[8]The whereabouts of 61.4% of all unmarried fathers of AFDC children are unknown and another 9.3% do not live in the same state as the mother. AFDC Study, table 4. While the number of fathers whose whereabouts were unknown would be somewhat reduced by the operation of Section 52-440b, it would remain very substantial; the number of married fathers whose whereabouts were unknown exceeded 50% for the sample period. *Ibid.*

[9]The Veterans' Administration Act, 38 U.S.C. §101(4)(C), provides that illegitimate children may recover benefits if they can show paternity by 1) a written acknowledgment of paternity, or 2) an adjudication of paternity, or 3) can "otherwise establish [paternity] to the satisfaction of the administrator." If no paternity action has been brought, the child still has an opportunity to prove paternity before the

Weber v. Aetna Casualty & Surety Co., 406 U.S. 164 (1972). In this way his financial interests are protected and the harmful and disruptive effects of a Section 52-440b proceeding may be avoided or at least deferred.[10]

administrator. A child whose mother has an acknowledgment does not need a §52-440b proceeding to get Veterans' benefits.

Some benefit programs require a showing of "dependency" in order to recover benefits. See, *e.g.*, 33 U.S.C. §902(14) (Longshoremen's and Harbor Workers' Compensation Act); 46 U.S.C. §761 (Federal Death on the High Seas Act). Connecticut's Workmen's Compensation Act has such a provision, Conn. Gen. Stats. §§31-275, 31-306. Use of Section 52-440b does not determine eligibility for these programs. There can be dependency without an adjudication of paternity, *Piccinim v. Connecticut Light and Power Company*, 93 Conn. 423 (1919), and dependency is not established by the existence of an obligation to support; there must be actual support, *Ingalls Shipbuilding Corp. v. Neuman*, 322 F.Supp. 1229, 1241-45 (D.Miss. 1970); Conn. Gen. Stats. §31-275.

Where a statutory benefit is awarded in accordance with state intestacy laws, *e.g.*, *De Sylva v. Ballentine*, 351 U.S. 570 (1956) (Copyright Act, 17 U.S.C. §24); Conn. Gen. Stats. §45-280 (Wrongful Death), the Connecticut child would not be assisted by a paternity decree, as he would still be excluded from intestate succession to the father's estate. *Heath v. White*, 5 Conn. 228, 235 (1824); *Arcand v. Fleming*, 185 F.Supp. 22, 24 (D.Conn. 1960); see *Labine v. Vincent* 401 U.S. 532 (1971). If these exclusions give way in light of *Weber v. Aetna Casualty & Surety Co.*, 406 U.S. 164 (1972), then Section 52-440b controls when the paternity determination is made, but will not provide an otherwise unavailable opportunity for it to be made; *Weber* struck down an exclusion of unacknowledged (and unadjudicated) dependent, illegitimate children from statutory benefits.

[10]With respect to one categorical benefit program—the Social Security Act, 42 U.S.C. §§401 *et seq.*—there is sometimes an advantage to bringing a paternity action. Some illegitimate children who cannot show a paternity adjudication in order to receive benefits will have to prove not only paternity but also that their father was "living with" them or "contributing to [their] support," 42 U.S.C. §416(h)(3), at the time made relevant by the statutory subsection applicable to the benefit in

Not only do Section 52-440b proceedings often fail to produce any real benefit to the child, but they may actually threaten financial interests in a variety of situations. First, litigation may interfere with a developing amicable relationship between the father and his family, a relationship which would serve the child's financial interest better than a support order.[11]

question. But the prejudice is only to a very slender category of children.

In order to be prejudiced under the statutory scheme, a child must 1) have a putative father who is insured under the Act and entitled to one of the categorical benefits; 2) have the disclosure required by Section 52-440b be followed by a paternity action, see footnote 8, *supra*; 3) have the paternity action be successful; 4) not have a timely written acknowledgment of paternity. The writing need not be formal, see *Madison v. Richardson*, 354 F.Supp. 383 (M.D. La. 1973); *cf. State v. Wolfe*, 156 Conn. 199 (1968); 5) not have been otherwise decreed by a court to be the child of the putative father, *cf. Hartford National Bank & Trust Co. v. Prince*, 28 Conn. Sup. 348 (Super. Court 1968); and 6) not be able to show the Secretary satisfactory proof of paternity together with evidence the child was living with or receiving support from his father at the relevant time.

The statutory definition of "living with or contributing to the support of" the child has been judicially interpreted extremely favorably to applicants, see *Madison v. Richardson, supra; Bridges v. Secretary*, CCH Unemployment Ins. Rep. ¶16,480 (E.D.N.Y. 1971); *Mobley v. Richardson*, CCH Unemployment Ins. Rep. ¶16,439 (W.D.N.C. 1971); *Wagner v. Finch*, 413 F.2d 267 (5th Cir. 1969); *Schmiedigen v. Celebrezze*, 245 F.Supp. 825 (D.D.C. 1965).

Indeed the Act's discrimination against unadjudicated illegitimate children may violate the Equal Protection Clause, see *Jimenez v. Weinberger*, ___ U.S. ___, 42 L.W. 4948 (June 19, 1974).

[11]A study of support payments from absent fathers shows that the greater the informality of a support agreement, the more likely it is that a father will make support payments and the larger those payments will be. S. Kaplan, *Support from Absent Fathers in Aid to Dependent Children, Social Security Bulletin,*

Second, a paternity suit pursuant Section 52-440b might be unsuccessful and in that case the rules of *res judicata* and collateral estoppel would preclude establishment of paternity at a more propitious time.[12] Third, there may be a potential adoptive father who would support the child, and disclosure or litigation might interfere with that alternative source of financial benefit to the child, see, *e.g.*, Affidavit of "Mary Brown." (App. 40.)

Finally, from the point of view of the child, the statute is self-defeating in any case where the mother is determined to resist disclosure. The mother may choose to be fined or imprisoned for contempt, or avoid the operation of the statute by removing her child from the welfare rolls, or she may testify falsely at the hearing. The latter two responses may well be quite common.[13] In such cases, the statute confers no financial benefit at

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Vol. 21, No. 2, Pages 3, 6, 9 (1958). The study concludes that the contribution rate of fathers contributing under court order is less than that of fathers voluntarily contributing because "[c]ourt proceedings may sometimes engender greater hostility between the parents of the children and impair any prospects that might have existed for a family reconciliation; in addition court costs must be paid." *Ibid.*, at 6. See also *Bridges v. Secretary*, CCH Unemp. Ins. Rep. ¶16480, at 2499-463 (E.D.N.Y. 1971).

[12] *Ruocco v. Logiocco*, 104 Conn. 585 (1926). The same adjudication could be used to bar recovery under federal statutes, see *Collins v. Celebrezze*, 250 F. Supp. 37 (S.D.N.Y. 1966); see also *In re Burrus*, 136 U.S. 586 (1890); *Harris v. Turner*, 329 F.2d 918 (6th Cir. 1964), cert. denied, 379 U.S. 907 (1964).

[13] For examples of removal of the child from the welfare rolls, see *Doe v. Norton*, 365 F. Supp. 65, 78 n.21 (D. Conn. 1973); *Welfare Commissioner v. A.A.*, Br. App. 7a; *Welfare Commissioner v. S.B.*, Br. App. 9a; *Welfare Commissioner v. R.C.*, Br. App. 11a. For examples of cases in which the court suspected untruthful testimony, see *Welfare Commissioner v. R.C.*, Br. App. 11a, at 14a-16a; *Welfare Commissioner v. M.B.*, Br. App. 18a.

all on the child, it may in fact harm him financially, and it may cause grave harm to other interests of the child as well.

In many cases, then, the child will realize no benefit from compulsory disclosure and prosecution of the father, and indeed in some cases the child may realize a financial loss.

The State asserts, however, that Section 52-440b offers children not only financial benefits, but important psychological benefits as well.

Psychological Interests

The State has asserted that compelled disclosure and prosecution of a paternity action benefits children psychologically by enabling them to know who their fathers are and by facilitating development of a father-child relationship. The State offered no evidence in support of this claim, and the record demonstrates that in many cases enforcement of the statute endangers paramount psychological interests of children and leaves them psychologically damaged casualties of the State's campaign against family privacy.

Embroiling the child's parents as adversaries in litigation of which he is the subject strains and may break developing bonds between the child and his father, either by disrupting the relationship between father and mother or by fostering paternal resentment of the child. Deposition of Albert Jay Solnit (App. 65-66, 68-70); Affidavit of Edward F. Zigler (App. 128); Affidavits of "A", "M," and "Sharon Roe" (App. 39, 42-43, 50-51); see *Doe v. Norton*, 365 F. Supp at 85 (concurring opinion).

Likewise the child's relationship with his mother is threatened when, on account of him, she is obligated to identify publicly the man with whom she has been sexually intimate, and to sue the father of her child.

The mother, already burdened with the difficult task of raising her illegitimate child without a husband and on the margin of financial subsistence, is placed under additional stress, which impairs her capacity to care for her child. Moreover, she may resent the child as the source of an onerous legal obligation or as the catalyst for the disruption litigation may have caused to her relationship with the child's putative father, see Affidavit of Edward Zigler (App. 128); Affidavits of "Rena Roe" (App. 37), and Mildred Walter (App. 41-42).

Finally, the child may be harmed by knowledge of his father's identity. Knowledge may interfere with a relationship between the child and a stepfather or adoptive father; or it may wound the child by underlining his absent father's shortcomings and rejection of the child, see *Doe v. Norton*, 365 F. Supp. at 85 (concurring opinion); Affidavit of Edward Zigler, (App. 126-127), Affidavits of "Mary Brown," (App. 40), "Frances Foe" (App. 45-46).

The State's claim of the effect of Section 52-440b, then, is shown by the record to be at odds with reality. It is also undercut by Connecticut's failure even to provide means for children to receive the benefits it asserts Section 52-440b will confer. The statute does not provide for disclosure of the name of the putative father *to the child*, for whom the statute will therefore lead to knowledge only via the humiliating route of public gossip. Nor has Connecticut conferred any parental rights on putative fathers. Conn. Gen. Stats. §45-43. The unwed father therefore has only such claims to enjoy a parental relationship with his child as may be recognized by the mother, or by the courts in light of *Stanley v. Illinois*, 405 U.S. 645 (1972). Neither of those claims depends upon a paternity adjudication under Section 52-440b.

b. Section 52-440b denies the child the opportunity to prove that his interests are not served, establishes an irrebuttable presumption contrary to fact, and thereby violates the child's right to due process of law.

Compulsory disclosure and prosecution under Section 52-440b may serve the financial and other interests of children in some cases and the financial interests of the State in some others. But in many more cases the proceeding serves no interest at all. By failing to provide for individualized determinations, the statute sweeps too broadly. It amounts to an irrebuttable presumption that the interests of the child are served (or at least not harmed) in every case, a presumption that applies even when the evidence as to a particular child might be wholly to the contrary.

Indeed, this presumption is not merely latent in the statutory scheme; it is reinforced by the policies of the Welfare Commissioner, the official empowered to demand disclosure and prosecute women under Section 52-440b. He demands that every woman on welfare make disclosure; he retains counsel for the purpose of prosecuting those who do not; and he only pays counsel who either elicit disclosure or bring a prosecution. See Stipulation No. 1 (App. 56); Deposition of Caroline Packard (App. 80-81, 90).[14]

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[14]Counsel for the Commissioner left no doubt at the hearing below that the statute, like the Commissioner's policy, rested in his view on a conclusive presumption. He was asked by the Court, "Are you saying that in every case the financial benefit to be derived from knowing the name of the father will always outweigh the factors such as emotional health, family stability, fear of violence and everything else that might cut against disclosure?" Transcript of Hearing at 50. The reply was unequivocal:

> "I think the rights of the children really demand that the action be brought in one hundred per cent of the cases, or

The court below suggested that the presumption was not in fact irrebuttable, that it might be open to the mother or child to persuade the circuit court to refuse to order disclosure in a particular case, on the ground that disclosure would not help, and might harm, the interests of the child. But the court below noted that the statute does not require the circuit court to consider the interests of the child, 365 F. Supp. at 74 n.14, and the State itself contends that the statute does not even permit litigation of that issue at the statutory hearing. Transcript of Hearing at 45.

Certainly the statutory procedures are designed to discourage consideration of the interests of the child. There is no provision for representation of the child in a Section 52-440b proceeding. When Connecticut recognizes that interests of the child warrant protection, it is generous in providing counsel. Children have counsel in every juvenile court proceeding which may affect their interests. Conn. Gen. Stats. §17-66b; Rules for the Juvenile Court, Connecticut Practice Book (1963), Section 1122 (effective July 1, 1974). Each minor whose rights "may be substantially affected in a proceeding before a court of probate" has a guardian ad litem appointed to represent those interests. Courts of Probate, Rules for Practice and Procedure, Rule 4, Connecticut Law Journal, April 30, 1974. In fact, appointment of a guardian ad litem is authorized by statute for any child who "may have an interest" in any proceeding in probate court, the court of common pleas, or superior court–*but not in a proceeding in circuit court*. Conn. Gen. Stats. §45-54. Connecticut has

substantially all the cases that you can reasonably do it in... I just think that the establishment of this status with the children outweighs any negative factors that are undoubtedly present in some of the cases." Transcript of Hearing at 51.

selected as the forum for Section 52-440b hearings, then, the only trial court in which children are *not* accorded the protections of counsel or a guardian ad litem.

Predictably, Circuit Court judges have not found consideration of the interests of children to be part of their task at Section 52-440b hearings. The fact that the State is supporting the child has invariably been regarded as a sufficient reason to compel disclosure and prosecution by the mother. See Br. App. 7a, *et seq.*

To summarize: The State has agreed that the interests of the child are not a proper subject of litigation at a Section 52-440b hearing; the District Court found that such consideration was not required by the statute; there is no provision in the statute for the interests of the child to be expressed or considered; and those interests have in fact not been considered or expressed as a possible limit on the State's recoupment power. In short, no consideration of the interest of children is provided in the statute.

The conclusive presumption embodied in Section 52-440b is not necessarily true; nor is it even true in most cases. Since it affects the important interest of family privacy, without allowing for an opportunity to test its validity in a particular case, the presumption, and with it the statute, must fall as violative of the Due Process clause of the Fourteenth Amendment.[15]

[15]It should be noted that while this brief argues that the State's financial interest is always insufficiently substantial to override the interest of the child in nondisclosure when disclosure would harm the child, it is not necessary to go so far to determine that Section 52-440b is unconstitutional. The analysis followed by Judge Newman in his concurring opinion leads to the same conclusion. Judge Newman saw the balance that needed to be struck as being between the privacy interests primarily of the mother and the State's interest in enforcing the support obligation, including its fiscal interest in recoupment. But, as Judge Newman points out, even giving that fiscal interest

In *Cleveland Board of Education v. LaFleur*, ___ U.S. ___, 94 S. Ct. 791 (1974), the Court found that the State's use of an irrebuttable presumption violated the constitutional maxims that intrusions into protected liberty must not "sweep too broadly, See *Shelton v. Tucker*, 364 U.S. 479 . . .," ___ U.S. at ___, 94 S. Ct. at 798, or "needlessly, arbitrarily, or capriciously impinge upon [a] vital area of . . . constitutional liberty." ___ U.S. at ___, 94 S. Ct. at 796. In *LaFleur*, the Court confronted a regulation that impinged on personal liberty in the important area of marriage and family life, as does the Connecticut statute at issue here. The regulation in *LaFleur* required teachers to stop working in their fifth or sixth month of pregnancy. The Court found that the statute could not be adequately justified by the State's interest in keeping physically unfit teachers out of the classroom, because "the ability of any particular pregnant woman to continue at work past any fixed time in her pregnancy is very much an individual matter." ___ U.S. at ___, 94 S. Ct. at 799. A fixed cut-off date therefore functioned as an irrebuttable presumption that all teachers were incapacitated by a certain time in pregnancy when many demonstrably were not. The presumption, said the Court, was impermissible and denied due process of law.

Similarly in *Stanley v. Illinois*, 405 U.S. 645 (1972), the Court evaluated a statute which affected personal

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enough weight to overcome the claim to family privacy in some instances does not conclude the inquiry. Mothers and children are still entitled to a determination of whether the State's interests, including its financial interest, in each particular case are sufficiently weighty to overcome their privacy interests.

Using Judge Newman's analysis does not alter the conclusion that the statute is unconstitutional. The principal vice of the statute is precisely that it provides no requirement or assurance that the competing interests be developed at a hearing or that establishment of the constitutional interests of mothers or children precede enforcement of the statute.

rights in the areas of marriage and family life. The statute in *Stanley* provided that "parents" were entitled to custody of their children absent a showing of neglect, and excluded illegitimate fathers from the definition of "parent." The court held that the exclusion could not be justified by the State's interest in protecting children from unfit parents, for that would amount to an irrebuttable presumption that illegitimate fathers are unfit: "[T]he State registers no gain toward its declared goals when it separates children from the custody of fit parents. Indeed, if Stanley is a fit father, the State spites its own articulated goals when it needlessly separates him from his family." 405 U.S. at 652-53. It concluded that the State's purpose could be served while protecting Stanley's interest "in the children he has sired and raised," 405 U.S. 651, by affording Stanley a hearing on the issue of fitness before he was deprived of the care and custody of his children. And in *Stanley* as in *LaFleur*, the Court determined that the other interests asserted by the State in support of its policy were simply too insubstantial to authorize otherwise unneccessary incursion into the liberty protected by the Fourteenth Amendment.

So in this case it is only the State's interest in the welfare of children which can justify intrusion into the liberty of those children and their mothers. But that interest is served only in some cases, and in others it is unaffected or even harmed. As in *LaFleur* and *Stanley*, the State's interest in the welfare of children could be fully protected by an individualized hearing at which the State, the mother, and the child could produce evidence on the issue of whether compelled disclosure, compelled prosecution or both would serve the interests of the child.

On occasion, some state interests have been found sufficient to justify an invasion of the right to family

privacy, but these have involved claims very different from those at issue here. In *Prince v. Massachusetts*, 321 U.S. 158 (1944), the Court upheld a state law limiting the hours and the nature of child labor, on the ground that such laws serve the State's interest in protecting children from the harmful effects of excessive labor on their physical and mental growth. No claim was made in that case that the State's interest would be served in some cases and not in others, and that a hearing should be held to determine which cases were appropriate for the application of the child labor laws. The challenge to the statute was based, rather, on the claim that even in a case where the State's interest might be served, the child should nevertheless be exempt on the ground of religious freedom.

Similarly in *Wyman v. James*, 400 U.S. 309 (1971), the Court upheld a statute authorizing a welfare caseworker to make periodic visits to the home of the client, on the ground that it served the State's interest in protecting the child and determining whether the welfare grant was used for the child's benefit. Once again, there was no claim that the State's interest would be served only in certain cases, and a hearing should be held to determine which ones. The claim was, rather, that even if the State's interest would in fact be served, the client should be immune to search in the absence of probable cause.

In this case, on the other hand, the children make no blanket claim of immunity from the operation of the statute. The claim is simply that the State's asserted justification for the statute exists in some cases, and in many others it does not. Rather than presuming that it exists in all cases, the State has an obligation under the Due Process Clause to provide a hearing at which the issue can be determined in each case.

The District Court attempted to distinguish irrebuttable presumptions of fact from what it termed a

legislative "value judgment about the responsibility—financial and perhaps moral—of all fathers." 365 F. Supp. at 74-75 n.14. But the "value judgment" of the statute is in fact more specific: that all fathers of illegitimate children on welfare ought to be identified and compelled to pay support irrespective of the consequences of disclosure or compulsion on the children and their mothers. If this judgment reflects in turn a legislative determination that fattening the State's coffers justifies harm to children and invasion of their fundamental rights to privacy, that determination is not constitutionally permissible. The State is not free to invade rights of children given special constitutional protection, nor to jeopardize the child's welfare, which is "paramount," *Wyman v. James*, 400 U.S. 309, 318 (1971), with such slim justification. See Section I(B)(1), pp. 18-22, *supra*.

If, on the other hand, the State's "value judgment" reflects a determination that the interests of children will be served by the statute, it clearly rests on a presumption of fact which is often not true.

In cases where the presumption is not true, the State's compelling interest in the welfare of children is not served. Indeed, the State then has an interest, equally compelling, in avoiding disclosure or prosecution of a paternity action. Restriction of the statute only to cases where compulsion serves the interest of the child advances the State's compelling interest.

In rejecting the claim that due process requires individualized determinations, the District Court relied principally on grounds of administrative impracticality: "To make matters turn upon *ad hoc* inquiries into the actual state of mind of particular women, thereby encumbering Mann Act trials with a collateral issue of the greatest subtlety, is hardly an acceptable solution." *Wyatt v. United States*, 362 U.S. 525, 530, 1960, quoted at 365 F. Supp. 74 n.14. But here the issue of the best interests of the child is not collateral: it is

central and fundamental to the purpose and working of the statute. What was at issue in *Wyatt* was the right of a witness to claim an evidentiary privilege in a criminal jury trail under a statute whose application was not challenged. Here the issue is the constitutional right of mothers and children to resist the application of the statute itself.

Cases rejecting legislative irrebuttable presumptions have all pointed to the availability—present or potential—of workable procedures for individualized determinations. *Cleveland Board of Education v. LaFleur*, ___ U.S. ___, 94 S. Ct. 791, 800 n.14 (1974), *United States Department of Agriculture v. Murry*, 413 U.S. 508, 517 n.2 (1973) (Stewart, J., concurring), 518 (Marshall, J., concurring); *Vlandis v. Kline*, 412 U.S. 441, 451-452 (1973); *Stanley v. Illinois* 405 U.S. 645, 657 n.9 (1972); *Bell v. Burson*, 402 U.S. 535, 542-543 (1971).

Here the mechanism for an individualized determination is readily available—it is the §52-440b proceeding itself. All that need be done is to require judges to consider the child's interests, and to provide representation for the child, so that his interests may be developed. The question of the best interests of the child is peculiarly susceptible to resolution on a case-by-case basis, rather than by a single legislative determination. In matters of child custody, and cases involving neglected, dependent, and delinquent children, Connecticut assigns determination of the best interests of the child to its courts for individualized consideration rather than attempting to establish those interests by legislative classification and presumption. See Conn. Gen. Stats. §§17-59, 17-62, 17-68; Public Act 73-373, §§15-19, 24, 26, 31, 37.

The right to a hearing when important interests are at stake is the most fundamental element of due process of law. *Stanley v. Illinois*, 405 U.S. 645, 657-658 (1972); *Bell v. Burson*, 402 U.S. 535, 539 (1971); *Goldberg v. Kelly*, 397 U.S. 254, 264 (1970). Connecticut has foreclosed a hearing on the vital issue of the best interests of the child while it seeks to rely on those interests to justify its intrusion into the most intimate aspects of family life. When private interests of this magnitude are involved, the State may not proceed by presumption. *Cleveland Board of Education v. LaFleur*, ___ U.S. ___, 94 S. Ct. 791, 799-800 (1974); *Stanley v. Illinois*, 405 U.S. 645, 656-657 (1972). Its failure to provide children a hearing deprives them of due process of law.

II.

SECTION 52-440b DISCRIMINATES AGAINST THOSE ILLEGITIMATE CHILDREN WHO ARE POOR BY PROVIDING THAT ONLY A POOR CHILD IS SUBJECT TO COMPELLED DISCLOSURE AND PROSECUTION OF HIS FATHER WITHOUT REGARD TO THE IMPACT OF COMPULSION ON THE CHILD.

Section 52-440b appears to authorize compelled disclosure of the paternity of all illegitimate children. But in its enforcement mechanism the statute makes a critical distinction between children receiving welfare and all other children. The result of this distinction is that a welfare child is subject to compelled disclosure without any determination of the child's best interests, while any other child can be subjected to compelled disclosure only after a court has made a preliminary determination of his best interests, and a guardian or guardian ad litem has concluded that the suit will in fact serve the child's interests. This distinction denies illegitimate children who are poor the equal protection of the laws.

The distinction arises in the following way. For children who are recipients of public assistance, the statute authorizes the state Welfare Commissioner to bring the suit to compel disclosure. Similarly, for children who receive general assistance, the statute authorizes the town selectman, who is the administrator of the general assistance program, to bring the suit. But for children who are not on welfare, the statute confers the authority to bring suit only on a guardian or guardian ad litem. This distinction has two important consequences.

First, under Connecticut law the mother herself is the guardian of an illegitimate child, unless a court finds that the child's interests require the appointment of a guardian or guardian ad litem. Conn. Gen. Stats. §§45-43, 45-54. Thus, in the case of a child who is not on welfare, no third party has the power to file suit against the mother to compel disclosure, unless a court has determined that the child's interest requires the appointment of a guardian for the purpose of deciding whether to file the suit. In the case of a welfare child, on the other hand, no judicial determination is necessary to authorize a third party to file suit to compel disclosure.

Second, if a guardian is appointed for the purpose of deciding whether or not to compel disclosure, the guardian is obligated to make that decision solely on the basis of the child's best interest. In the case of a welfare child, however, for whom the decision is made by the welfare commissioner or the town selectman, the decision-maker is authorized to consider not only the interest of the child but also the possible conflicting interest of the Town or the State in the financial contributions of the putative father. Indeed, the interest of the child may be not only secondary but irrelevant; the defendant interprets Section 52-440b to deprive him of discretion to decline to enforce a support

obligation. Thus department policy requires prosecution of every mother without regard to the best interests of her children. Stipulation 1 (App. 56); Deposition of Caroline Packard (App. 80-81, 90).

A welfare child, then, is denied the two assessments of his interest which would be made for any other child: first, a preliminary judicial determination, and then a determination by a guardian that his interest would be served by compelled disclosure.

In assessing a legislative discrimination under the Equal Protection Clause, it is necessary to consider the nature of the classification, the individual interest affected by the classification, and the state interest asserted to justify it. See *Memorial Hospital v. Maricopa County*, ___ U.S. ___, 94 S. Ct. 1076, 1080 (1974); *Weber v. Aetna Casualty & Surety Co.*, 406 U.S. 164, 173 (1972); *Harper v. Virginia Board of Elections*, 383 U.S. 663, 668-70 (1966).

The nature of the classification is a discrimination based on poverty. Those illegitimate children who receive some form of welfare assistance are treated differently from those who do not. This Court has of course invalidated under the Equal Protection Clause a long line of distinctions based on poverty, see, *e.g.*, *Tate v. Short*, 401 U.S. 395 (1971); *Harper v. Virginia Board of Elections*, 383 U.S. 663 (1966); *Douglas v. California* 372 U.S. 353 (1963); *Griffin v. Illinois*, 351 U.S. 12 (1956), and has reiterated that classifications based on wealth are constitutionally disfavored. *McDonald v. Board of Election Commissioners*, 394 U.S. 802, 807 (1969); *Harper v. Virginia Board of Elections*, 383 U.S. at 668. The distinction drawn by Section 52-440b is even more clearly invidious than the distinctions struck down in *Tate*, *Harper*, *Douglas*, and *Griffin*. For in those cases the discrimination against the

poor was not explicitly made by statute; it simply resulted from the fact that the State failed to provide a benefit to the poor that was available for purchase by the rich. In this case, however, the State has explicitly established for the poor a set of rules different from and harsher than those for the rich. There can be no clearer instance of a discrimination based on poverty.

The interest affected by the classification in this case is plainly substantial: it is the child's interest in protecting his privacy, his psychological well-being, and the stability of his home from the possible adverse effects of compelled disclosure and litigation over his paternity and support. See pp. 9-17 *supra*. It might be argued that this interest of the child is not substantially affected at all, that it is protected by a "sound judicial discretion" in the trial court to refuse to order disclosure. The statute does not, however, direct the trial judge to exercise his discretion in favor of the interests of the child. Moreover, even if it did, the welfare child would still be disadvantaged by the absence of an advocate for his interests. For in the case of any other child, a guardian decides whether compelled disclosure serves the child's interests, and if he thinks not, there is no suit to compel disclosure. In the case of the welfare child, however, the suit proceeds, and while the judge may have discretion to apply his own view of the child's best interest, no guardian or other advocate for the child will urge this course upon him.

What plausible bases are there for this discrimination against the poor? It might be argued that for a poor child financial support from his father is necessarily more valuable than any psychological benefit obtained by avoiding disclosure or litigation; a child who is already adequately supported, on the other hand, can afford to sacrifice additional support for less tangible benefits. On that theory, then, there is no need for a

judgment about the best interests of a poor child, because it will always be in his best interest to seek support. That argument overlooks the fact, however, that support payments from the father provide no financial benefit to the child on welfare, unless the father can support the child at a level that exceeds the level of welfare support. It also overlooks the possibility that any marginal financial benefit to the child may be outweighed in the particular case by the risk of serious psychological harm to the child. This possibility is recognized by the statute in the case of the non-welfare child, for whom a judgment is made by a parent or guardian, taking all factors into account. The non-welfare child may have precisely the same financial needs as the welfare child—their level of support may in some cases be identical—and yet the statute provides that for the welfare child, the pursuit of additional financial support must always be paramount. The financial needs of the child fail to justify the State in disregarding the psychological needs of an illegitimate child on welfare, when the State recognizes those needs for all other illegitimate children.

It might alternatively be argued that the distinction is justified not by the interests of the children, but by the fiscal interests of the State. In the case of children on welfare, the State has an interest in finding the father and enforcing his support obligation, in order to recoup past state expenditures and avoid future ones. See Conn. Gen. Stats. §§17-83e, 17-324. But the State's interest in recoupment bears no rational relationship to the precise discrimination worked by Section 52-440b. For the statute provides that the interests of children on welfare shall be not only subordinated to the State's interests, but wholly denied expression. The court below suggested that there is room in the enforcement of the statute for courts to consider the interests of the children. But while all children ought to receive that consideration, the statute singles out welfare children

and denies them the means of presenting their interests to the court. If all children are equally entitled to have their interests considered, there can be no basis for denying one class of children the representation necessary for adequate expression of their interests. In resolving the conflict between the interests affected by disclosure, the weight of the State's financial interest is wholly unrelated to the question whether the child's interests should be adequately represented and expressed.

Moreover, on any view of the statute, the protection of the State's treasury is not a substantial enough state interest to justify a discrimination that affects important personal rights, and that is based on the disfavored ground of poverty. Whatever the legitimacy of considerations of economy in cases where legislative classifications affect less important interests, the State's interest as a potential creditor cannot justify a discrimination which deprives poor children of the fundamental right to have their family privacy invaded only after a consideration of the impact of that invasion on their well-being. See *Memorial Hospital v. Maricopa County*, ___ U.S. ___, 94 S. Ct. 1076 (1974); *Shapiro v. Thompson*, 394 U.S. 618 (1969).

CONCLUSION

For the reasons stated it is respectfully submitted that the judgment of the court below should be reversed.

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June 19, 1974

CERTIFICATION

This is to certify that a copy of the foregoing Brief was mailed First Class Mail, Postage Prepaid, by depositing same in a United States Mail Box on June 20, 1974, to each of the following:

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APPENDIX A

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Sec. 52-435a. Petition by mother or expectant mother. Continuance of case. Evidence. Proceedings to establish paternity of a child born or conceived out of lawful wedlock including one born to, or conceived by, a married woman but begotten by a man other than her husband, shall be instituted by a verified petition of the mother or expectant mother, with summons and order, filed in the circuit court for the circuit in which either she or the putative father resides. Upon the filing of such petition, said court or any judge assigned to said court shall cause a summons, signed by him or by the clerk or assistant clerk of said court, to be issued, requiring the putative father to appear in court at a time and place named therein to show cause, if any he has, why the prayer of such petition should not be granted. Such petition, summons and order shall be in a form approved by the judges of the circuit court. In the case of a child or expectant mother being supported wholly or in part by the state, service of such petition may be made by any investigator employed by the state welfare department. No such petition shall be brought after three years from the birth of such child, or after three years from cessation of contribution toward support of the child by the putative father, whichever is later; provided the provisions of section 52-590 shall be applicable to this section. If such putative father fails to appear in court at such time and place, the court may hear the petitioner and enter such judgment and order as the facts may warrant. Such court may order continuance of such hearing; and if such mother or expectant mother continues constant in her accusation, it shall be evidence that the respondent is the father of such child.

Sec. 52-435b. Testimony of mother. The mother of any child for whom adjudication of paternity is sought

in paternity proceedings shall not be excused from testifying because her evidence may tend to disgrace or incriminate her; nor shall she thereafter be prosecuted for any criminal act about which (1) she testifies in connection with such proceedings, or (2) she makes any statement prior to such proceedings with respect to the issue of paternity.

Sec. 52-435c. Testimony of putative father. The putative father of any child for whom adjudication of paternity is sought in paternity proceedings shall not be excused from testifying because his evidence may tend to disgrace or incriminate him; nor shall he thereafter be prosecuted for any criminal act about which (1) he testifies in connection with such proceedings or (2) he makes any statement prior to such proceedings with respect to the issue of paternity.

Sec. 52-439a. Withdrawal or settlement. No such petition shall be withdrawn except upon approval of a judge assigned to the circuit in which the petition was brought. Any agreement of settlement, before or after a petition has been brought, other than an agreement made under the provisions of section 52-442a, between the mother and putative father shall take effect only upon approval of the terms thereof by a judge of the circuit court assigned to the circuit in which the mother or the putative father resides and in the case of children supported by the state or the town, to the approval of the welfare commissioner or the attorney general. When so approved, such agreements shall be binding upon all persons executing them, whether such person is a minor or an adult.

Sec. 52-440a. Action by state or town. The state or any town interested in the support of a child born out of wedlock may, if the mother neglects to bring such petition, institute such proceedings against the person accused of begetting the child, and may take up and pursue any petition commenced by the mother for the maintenance of the child, if she fails to prosecute to final judgment. Such petition may be made by the welfare commissioner of the town welfare administrator on information or belief. The mother of the child may be subpoenaed for testimony on the hearing of the petition.

Sec. 52-442. Judgment and order of court. If the defendant is found guilty, the court shall order him to stand charged with the support and maintenance of such child, with the assistance of the mother if she is financially able, and to pay a certain sum weekly until the child attains the age of eighteen years; and the court shall ascertain the expense of lying-in and of support and maintenance of the child until the time of rendering judgment, and order him to pay the amount thereof to the complainant, or, if a town or the state has paid such expense, to the town or the state, as the case may be, and shall grant execution for the same and costs of suit taxed as in other civil actions, together with a reasonable attorney's fee; and may require him to become bound with sufficient surety to perform such orders for support and maintenance and the expense of lying-in and to indemnify the state of the town chargeable with the support of such child from any expense for its maintenance. If he fails to comply with any such order, the court may commit him to a community correctional center, there to remain until he complies therewith; but, if it appears that the mother does not apply the weekly allowance paid by him

toward the support of such child, and that such child is chargeable, or likely to become chargeable, to the town where it belongs, the court, on application, may discontinue such allowance to the mother, and may direct it to be paid to the selectmen of such town, for such support, and may issue execution in their favor for the same. The provisions of section 17-323a shall apply to this section. The clerk of the court which has rendered judgment for the payment of money for the maintenance of any child under the provisions of this section shall, within twenty-four hours after such judgment has been rendered, notify the selectmen of the town where the child belongs. Any order for the payment of support for any such child may at any time thereafter be set aside or altered by any court issuing such order. Failure of the defendant to obey any order for support made hereunder may be punished as for contempt of court and the costs of commitment of any person imprisoned therefor shall be paid by the state as in criminal cases.

Sec. 52-442a. Acknowledgment of paternity and agreement to support; judgment. (a) In lieu of or in conclusion of proceedings under section 52-435a, the written acknowledgment of paternity executed by the putative father of the child when accompanied by a written affirmation of paternity executed and sworn to by the mother of the child and filed with the circuit court for the circuit in which the mother of the child or the putative father resides shall have the same force and effect as a judgment of that court; and an agreement to support the child by payment of a weekly sum until the child attains the age of eighteen years, together with provision for reimbursement for lying-in expense, accrued maintenance and reasonable expense

of prosecution of the petition, when filed with, and approved by a judge of, said court, at any time, shall have the same force and effect, retroactively or prospectively in accordance with the terms of said agreement, as an order of support entered by that court, and shall be enforceable and subject to modification in the same manner as is provided by law for orders of the court in such cases. Payments under such agreement shall be made through the family relations division of the circuit court. Such written affirmations, acknowledgments and agreements to support shall be sworn to, and shall be binding on the person executing the same whether he is an adult or a minor. Such mother shall not be excused from making such affirmation on the ground that it may tend to disgrace or incriminate her; nor shall she thereafter be prosecuted for any criminal act involved in the conception of the child as to whose paternity she makes affirmation.

(b) At any time after the filing with the court of any acknowledgment of paternity, upon the application of any interested party, the court or any judge thereof shall cause a summons, signed by him or by the clerk or assistant clerk of said court, to be issued, requiring the putative father to appear in court at a time and place named therein, to show cause, if any he has, why the court should not enter judgment for support of the child by payment of a weekly sum until the child attains the age of eighteen years, together with provision for reimbursement for lying-in expense, accrued maintenance and reasonable expense of the action under this subsection on the acknowledgment of paternity previously filed with said court. The prior judgment as to paternity shall be res adjudicata as to that issue and shall not be reconsidered by the court. All such payments shall be made through the family relations division of the circuit court.

Sec. 52-442b. Filing of agreements. Disclosure. All agreements entered into under the provisions of sections 52-439a and 52-442a shall be filed by the clerk of the circuit court of the circuit in which they are entered, and no information concerning any such agreement, the parties thereto or the contents thereof may be disclosed other than to the state or a municipal welfare administrator except on order of a judge assigned to said circuit.

Sec. 52-442c. Enforcement of prior orders and agreements. The circuit court shall have jurisdiction to enforce and modify all paternity orders and paternity support agreements issued by or filed with the court of common pleas prior to or after October 1, 1963, and existing on July 1, 1965, and, on application to said circuit court for enforcement or modification and upon request by the clerk of said court to the clerk of the appropriate common pleas court, the common pleas court file shall be transferred to the circuit court and there docketed for all subsequent proceedings.

Sec. 52-443. Continued liability of person committed for failure to comply with order. No person committed to a community correctional center for failure to comply with an order of the court as provided in sections 52-435a, 52-440a and 52-442, or any of them, shall be entitled to any of the privileges allowed other prisoners on civil process, or to take the oath provided for poor debtors, within six months from the date of such commitment, but shall be kept at hard labor during such six months; and the mother of such child, the state or the town chargeable with its support

may, at any time after the liberation of such prisoner, or after his taking said oath, recover the sum or sums due from him in pursuance of such order of court.

Sec. 52-444. Support of defendant while imprisoned. The complainant shall not be required to pay or give security for the support of the defendant during his confinement in a community correctional center, nor shall such defendant be discharged from imprisonment by reason of payment or security not being made or given for his support, but the jailer shall furnish such support and may recover the cost of the same from such defendant, or, in case of his inability to pay such cost, from the town where he belongs; and, if he belongs to no town in this state, such cost shall be paid by the state.

Sec. 52-445. Wage execution. Executions in accordance with section 52-362 shall be available in paternity proceedings.

CASE I

A.A.

April 2, 1973, Middletown, Conn.

THE COURT: A.A., how old are you?

THE DEFENDANT: Twenty-five.

THE COURT: Is this lady willing to disclose the name of the father?

MR. MURPHY: Your Honor, as you probably know there is currently pending in the Federal Court an action on Section 52-440b. In fact, today is the date of

the hearing on the matter. I would respectfully ask this Court to continue this matter pending the outcome of the case.

THE COURT: Is this the United States Court in Hartford?

MR. MURPHY: Yes, it is, and the issue of this case. . . .

THE COURT: The only trouble is that their decision may not be binding on this court. I will continue it for a week or a short stay. I'll give you a short stay because we are not going to wait until that case goes to the Supreme Court of the United States. There are various district courts and may differ throughout the country on your decision. I found that on the Court of Appeals. They are not binding on my court unless I agree with it.

MR. MURPHY: I don't believe the State of Connecticut is going to be adversely effected by the continuance. The child is only eighteen months old and there is exactly a year and a half to one on the statute, the limitation to a paternity action. Your Honor, I would ask at least one month.

THE COURT: I will give you a month. But if that decision is unduly delayed, as I have said before, unless I agree with the decision it is not binding on me because it is a trial court level collection. What particular date?

THE CLERK: May 1st.

(Whereupon, the matter was continued to May 1st, 1973.)

A.A.

May 7, 1973, Middletown, Conn.

MR. CARTA: A.A., your Honor, that may go off. That person is no longer receiving state aid.

THE COURT: May go off.

(Whereupon, the matter was concluded.)

CASE II

S.B.

April 2, 1973, Middletown, Conn.

MR. CARTA: Are you willing to disclose the name of the father?

THE DEFENDANT: No.

THE COURT: You are not?

THE DEFENDANT: No.

THE COURT: All right, take the witness stand. . . .S.B., . . . New Britain, Connecticut, being duly sworn by the clerk, testified as follows:

BY MR. CARTA:

Q. Miss B, are you the mother of a child born on January 21, 1973? A. January 12.

Q. 1973? A. 1971.

BY THE COURT:

Q. S.B. A. Right.

Q. When was he born? A. January 12, 1971.

BY MR. CARTA:

Q. Have you had a child born this year, January of this year? A. No.

Q. That's your only child? A. Yes.

Q. Now, Miss B, have you been on public assistance from the State of Connecticut? A. Yes.

Q. Are you presently on public assistance? A. I was supposed to get a check on the first of the month and I didn't because I'm working.

Q. When did you start working? A. Last Thursday.

Q. Have you been on public assistance in the past? A. Yes.

Q. Now, have you been as a result of the birth to you of this boy? A. Yes.

Q. Now, you reside at . . . , New Britain? A. Yes.

Q. That is still your present address? A. Yes.

Q. Have you been questioned by the Welfare Department in New Britain concerning the father of the child? A. Yes.

Q. Will you tell his Honor the identity of the father of the child? A. No.

BY THE COURT:

Q. You will not? A. No.

Q. Do you know what the statute says? Anyone who refuses to disclose the name of the father could be held in contempt of court and could be fined not more than $200 and imprisoned not more than one year or both. Do you understand that? A. Yes.

Q. And you still refuse? A. Yes.

Q. And the child is presently a recipient of the State Welfare? A. No.

Q. You didn't get one the first of this month. Was it ever terminated? Did you get the last check? A. No. You know I'm working. They found me a job and I was supposed to have the check on the thirty-first.

Q. Do I understand now that you are working this child is going off welfare? A. Yes.

THE COURT: Well, why don't you check that matter out, check whether this child is a recipient now. The statute says at the present is a recipient. You ought to amend your petition.

MR. CARTA: I think at the time I received notice—you just began working?

THE DEFENDANT: Yes.

THE COURT: Continue this also to May first. Check that because she would have a right to refuse even if the statute is constitutional if the child is not presently a recipient.

(Whereupon, the matter was continued to May 1, 1973.)

CASE III

R.C.

October 2, 1973, Middletown, Conn.

Before: The Honorable Eli L. Cramer, Judge.

R.C., Meriden, Connecticut, being duly sworn by the clerk, testified as follows:

THE COURT: Do you have counsel, Miss C?

THE DEFENDANT: No, I haven't.

THE COURT: Do you want counsel?

THE DEFENDANT: No, I don't believe it's necessary.

THE COURT: You don't feel it's necessary?

THE DEFENDANT: No.

THE COURT: And you wish to appear at this time on your own behalf without counsel?

THE DEFENDANT: Right.

THE COURT: And you don't wish counsel appointed for you?

THE DEFENDANT: No.

THE COURT: All right. Do you wish to consult with a lawyer? There is a lawyer present and I can ask him to give you advice.

THE DEFENDANT: I don't believe it is necessary.

THE COURT: You don't wish a lawyer to act as a friend of the court and this gentleman is here and is very familiar with the subject if you want to discuss it for a moment. Do you want to take a few moments to discuss it?

MR. CARTA: I think that would be a good idea. I discussed this matter with this lady.

THE COURT: This gentleman is a lawyer who is familiar with statutes, familiar with their implications. Your name, for the record.

MR. MILLER: Donald Miller, your Honor.

THE COURT: And a member of the Middletown Bar is going to discuss this matter with you. You are not being appointed but merely as amicus curiae in this case. We will take a few minutes.

(At 2:45 o'clock a ten minute recess was taken.)

AFTER RECESS

THE CLERK: Miss C, do you want to step down here please?

THE COURT: She has been sworn?

THE CLERK: Yes, she has been sworn, your Honor.

BY MR. CARTA:

Q. Miss C is your present address .... A. My name is Mrs. C.

Q. I beg your pardon. Is your present address ... Meriden? A. Yes, it is.

Q. Are you presently on State aid? A. I receive $106.89 a month from the State.

Q. Mrs. C, on or about November 1, 1971, did you give birth to a daughter? A. On November the first, 1971, yes.

Q. Mrs. C, are you able to day to identify or are you willing and able today to identify the father of your daughter? A. I would be willing if I knew. But I don't know so I can't.

Q. Is it your testimony therefore that you do not know? A. I do not know the name of my child's father.

Q. Mrs. C the birth date of Jennifer was November 1, 1971. Is that correct? A. Yes.

Q. That would place the date of conception somewhere around January of 1970? A. Yes, January.

Q. It was January, 1971? A. Yes.

Q. Do you recall some of your male companions during that period of time? A. No. I can truthfully say

that I do not remember. It was an affair that I have wanted to put out of my mind and I do not know.

Q. You don't know this individual's name? A. No, I don't. I believe at the time that it was a false name.

Q. Well, do you recall the name that he did give you? A. No, I don't.

Q. Do you recall the address of this individual? A. No, I don't.

Q. Where were you living at the time? A. In Meriden at the same address that I'm at at present.

Q. Did you know that he was living in Meriden? A. No, I knew that he was living somewhere in the Wethersfield area or I was told that is where he lived.

Q. And you have no remembrance, no memory at this time of the identity, the name of that person? A. No, I do not.

Q. Can you describe that person? A. Well, I could describe him. He was about forty-six, forty-seven, approximately five feet eleven, light complected, light hair, reddish, sort of auburn hair, and other than that I couldn't say too much about him.

Q. Well, Mrs. C you have described him fairly well considering the length of time that has passed. Is it your testimony now... A. Let me say this, I mean, the type of a person that is an unpleasant person, I might remember this name. I will associate a person I can recall them by sight but never be able to hook a name to that person.

Q. Mrs. C, how frequent, how many times did you see this person, was he a frequent companion? A. I saw him four times.

Q. And you can't remember what he was known by that or the name that he gave you? A. No, I certainly do not. I wish I did but I don't.

Q. You recall the discussion I had with you yesterday in the lawyers' lounge in this building? A. I certainly do.

Q. Didn't you indicate to me that even if you knew the name you wouldn't give the name? A. I didn't say I wouldn't give the name; I said I would consider it a gross intrusion of my privacy to have to give the name.

THE COURT: Mrs. C. let's stop playing games. I'm going to read to you the law under which I am proceeding which compels disclosure of the putative father. I will read it to you and you listen carefully. You just listen.

I will read it so it will be a matter of record. The mother of any child born out of wedlock, or the mother of any child born to any married woman during marriage which child shall be found, if you know, not to be issue of the marriage terminated by a divorce decree or by decree of any court of competent jurisdiction, fails or refuses to disclose the name of the putative father of such child under oath to the welfare commissioner, if such child is a recipient of public assistance, or to a selectman of a town in which such child resides, if such child is a recipient of general assistance, or otherwise to a guardian ad litem of such child, such mother may be cited to appear before any judge of the Circuit Court and compelled to disclose the name of the putative father under oath and to institute an action to establish the paternity of said child. And this is why you are here. Now (b) any woman having been cited to appear before a judge pursuant to subsection (a), fails to disclose or fails to prosecute a paternity action may be found to be in contempt of Circuit Court, fined not more than $200 and imprisoned not more than one year or both. This is an act of the Legislature and we are not here to play games. It has been upheld by the three judge panel—and I am giving you fair warning, Mrs. C that I don't want any games played. Disclose the name. You are under

oath. Now, you have five minutes to do it. I don't want any speeches, just disclose the name.

THE DEFENDANT: I do not know. I am under oath in the court of the State of Connecticut and I can truthfully say I do not know the name of my child's father.

THE COURT: What was the name under which he was known when you went with him?

THE DEFENDANT: That I can truthfully say I do not recall either.

THE COURT: Counsel, was there some information given to you yesterday that this lady said she wouldn't disclose the name?

MR. CARTA: No, your Honor.

THE COURT: Did you tell this to the lawyer yesterday that you wouldn't disclose the name?

THE DEFENDANT: I didn't say I wouldn't. I said if I did know, I would consider it a gross intrusion of my privacy to have to do so.

THE COURT: Well, I'm going to order you. This is no gross intrusion. Legislature has determined it is not and the United States District Court. I do not consider it a gross intrusion, nor the Legislature of the United States. Disclose the name and whether it intrudes on your privacy is something you can come forth yourself on later. If you don't, I will exercise the penalty by law and I am going to send you to jail.

THE DEFENDANT: Your Honor, you are trying to make me say something that I don't know.

THE COURT: You have made ambivalent statement that it is a gross intrusion on your privacy.

THE DEFENDANT: I feel that it is. Even having to be here is a gross intrusion of my privacy.

THE COURT: If you wish to discontinue it, discontinue being a ward of the State of Connecticut and they will have no right to compel you.

THE DEFENDANT: All right. I will do that if that is what the Court wants, then that is finished.

THE COURT: That can happen later. But you are receiving aid at the present time when you were served.

MR. MILLER: May we have this continued for a week possibly? I believe Mrs. C does honestly at this time not remember the name of this person but perhaps in a week she might be able to find out the name of the father.

THE COURT: I will continue it a week, and if you do not disclose. . . .

THE DEFENDANT: Your Honor, if I don't know, how can I. . . .

THE COURT: You do know, Mrs. C. I don't believe you.

MR. CARTA: May that be two weeks to place that on the same day as the other ones?

THE COURT: You be back here two weeks from today with the other matters at two o'clock Mrs. C, and you have arrangements made if you do not disclose at that time, you have arrangements made to take care of your child.

THE DEFENDANT: I have two children, your Honor.

MR. MILLER: Your Honor, am I required to be back on that day as well?

THE COURT: Do you wish this young man to act as your attorney?

MR. MILLER: I should say I am with Legal Aid, one of which Mrs. C does not meet.

THE COURT: Do you wish some form of representation?

THE DEFENDANT: I will get counsel.

THE COURT: You will get your own?

THE DEFENDANT: I will get counsel.

THE COURT: Continued to October 16th, two o'clock.

(Whereupon, the matter was continued to October 16, 1973.)

Letter from Welfare Department to its attorney in the "R.C." case.

State of Connecticut
WELFARE department
139 Charles Street, Meriden, Conn. 06450 - (203) 238-1991

October 12, 1973

Mr. John J. Carta, Jr.
547 Main Street
Middletown, Conn.

Re: R.C.

Dear Sir:

Please be advised that we have closed this case as of 10/15/73. Please close your file on this case. Thank you!

Very truly yours,
Mrs. [Illegible]
Resources

CASE IV

WELFARE	:	TENTH
COMMISSIONER	:	CIRCUIT COURT
	:	
VS.	:	HELD AT
	:	NEW LONDON
	:	
M.B.	:	ON DECEMBER
	:	20, 1972

Before:

HON. GEORGE E. KINMONTH, JR.

Appearances:

ROBERT D. TOBIN, ESQ.
For the Welfare Commissioner
2 Union Plaza
New London, Connecticut

No appearance for
the Defendant

* * * * *

THE COURT: The next matter is M.B. I am going to ask you the same thing. Do you want to get an attorney to represent you?

THE DEFENDANT: No, I don't.

THE COURT: Are you willing to divulge who the father is?

THE DEFENDANT: No, I am not.

THE COURT: You're not going to?

THE DEFENDANT: No.

THE COURT: You're on Welfare now?

THE DEFENDANT: My daughter is until the end of the year. You see, I am in school. I am in college. As soon as I finish this year of college, I won't be on welfare anymore, as soon as I start working.

THE COURT: In this particular matter, the statute says that you're subject to a year in jail or $200.00 fine if you refuse to divulge knowledge who the father of the child is.

THE DEFENDANT: Then I'd rather not have welfare at all.

THE COURT: I know, but there is a long bill back here that the State is interested in getting some of the money back. That is the purpose of this matter.

THE DEFENDANT: My mother and dad said they would pay for the whole thing. So it doesn't matter to me one way or the other.

THE COURT: You mean your mother and father are willing to pay the State what you already received on welfare in the care of this child?

THE DEFENDANT: I suppose so. That is what she told me. She said if it was a money matter, she would take care of it or my father would because I am living at home.

THE COURT: Well, I am telling you as you stand there in front of me that if you refuse to divulge the name of the fa . . .

THE DEFENDANT: I don't know what the name of the father is.

THE COURT: I can give you a year in jail or a $200.00 fine or both.

THE DEFENDANT: I don't know who the father is. I couldn't. . . .

THE COURT: Where do your mother and father live?

THE DEFENDANT: Pawcatuck, Connecticut.

THE COURT: What are their names?

THE DEFENDANT: Mr. and Mrs. J.B., Pawcatuck.

THE COURT: I think until you have some time to investigate this matter, I will continue it.

MR. TOBIN: Yes, your Honor.

THE COURT: And I want you to keep in mind what I just told you. The statute calls for a year in jail

or $200.00 fine if you refuse to divulge knowledge.

THE DEFENDANT: Yes, but what if I don't know then what to do.

THE COURT: Well, that seems a little illogical, if you don't know who you had relations with; who is the father of your child.

THE DEFENDANT: But I don't.

THE COURT: That is rather an intimate thing. You should pretty well know who it was. How much time do you want on this matter.

MR. TOBIN: Two weeks, if your Honor please.

THE COURT: Do you have the figure of how much she is in to the State for?

MR. TOBIN: We do.

MR. KIRKER: They only have the award, the money award, your Honor, not the total.

THE COURT: I think when you investigate, if you talk to her family, you better have the total figure; otherwise, this girl is not liable to be in school; she is liable to be in Montville. All right, we will continue this case for two weeks.

* * * * *

M.B. . . . called as a witness, having been first duly sworn, testified as follows:

COURT CLERK: State your name.

THE WITNESS: M.B.

COURT CLERK: Where do you live?

THE WITNESS: Pawcatuck, Connecticut.

COURT CLERK: You may be seated.

DIRECT EXAMINATION BY
MR. TOBIN:

Q. Miss B. you are the mother of a child born March 20, 1972? A. Yes.

Q. Your child is receiving public assistance? A. Yes, she is.

Q. Would you tell the name and address of the father of this child? A. I don't know the address, but his name is J.T.

Q. J.T. A. Yes, he was living somewhere in Westerly, Rhode Island, but I am not sure where he is living now and I don't think he is working either.

Q. Was he attending school? A. No.

Q. Do his parents live in Westerly. A. I don't know where his parents live.

Q. Is he from Rhode Island? A. Bradford or some place around there, I am not positive.

Q. When was the last time that you have seen him? A. In August this past summer.

THE COURT: August of this year? A. Yes.

THE COURT: Where was he living then? A. He had a cottage at the beach somewhere, but I haven't associated with him at all.

THE COURT: Well, the child was born in March and you have seen him in August? A. Just to say hello to; no personal relationship at all. Nothing like that.

THE COURT: Where did you say his parents live? A. Somewhere past Bradford, Rhode Island. I don't know where. I don't even know his parents.

MR. TOBIN: Nothing further, your Honor.

THE COURT: All right, you're excused.

* * * * *

CASE V

WELFARE	:	TENTH
COMMISSIONER	:	CIRCUIT COURT
	:	
VS.	:	HELD AT
	:	NEW LONDON
	:	
A.M.M.	:	ON DECEMBER
	:	20, 1972

Before:

HON. GEORGE E. KINMONTH, JR.

Appearances:

ROBERT D. TOBIN, ESQ.
For the Welfare Commissioner
2 Union Plaza
New London, Connecticut

No appearance for
the Defendant

* * * * *

THE COURT: You have heard what I have said. Are you willing to divulge knowledge who the father of your child is?

THE DEFENDANT: The father lives in England.

THE COURT: At least you can divulge knowledge who it is. That's all we are after.

THE DEFENDANT: Right now I prefer not to. I think I want to see an attorney about this.

THE COURT: All right. How much time do you want?

THE DEFENDANT: Two weeks–a week; I don't know.

THE COURT: All right, put this down for January 3rd. Now you heard me say that if you are

unwilling to cooperate, why I can give you a year in jail or $200.00 fine. Being on State aid, you most likely will get a jail sentence, if you don't want to cooperate. You better come back on January 3rd willing to do something.

THE DEFENDANT: Okay.

THE COURT: Continued to January 3rd.

* * * * *

A.M.M., called as a witness, having been first duly sworn, testified as follows:

COURT CLERK: State your name.

THE WITNESS: A.M.M.

COURT CLERK: Where do you live?

THE WITNESS: . . . , Groton.

COURT CLERK: Thank you. You may be seated.

DIRECT EXAMINATION BY
MR. TOBIN:

Q. Are you the mother of a child born September 27, 1972? A. Yes.

Q. The child is receiving public assistance? A. Yes.

Q. Will you disclose to the Court the name and address of the father of the child? A. R.M.R. He went back to England today.

THE COURT: His name is R? A. R.

THE COURT: He went back to England today? A. Yes.

THE COURT: Was he is the Navy? A. No, he works for the English Government.

THE COURT: Where was he living before he left? A. Well, up until the beginning of September he lived in . . . Niantic and he went back to England for a month. . . .

THE COURT: 7 what? A. . . . in Niantic and he went back to England for a month and came back here

in October on temporary duty until today to finish up the project he was working on for three years.

THE COURT: Who did he work with? A. . . . in New London. I can tell you where he works in England.

THE COURT: . . . A. He was an exchange scientist.

THE COURT: And he just left? A. Well, his plane leaves at 7:00 tonight.

THE COURT: His plane leaves at 7:00 tonight? A. Well, he's left. He is in New York right now.

THE COURT: What plane is he taking? A. I don't know. All I know is his flight is 7:00 tonight. I didn't ask him.

THE COURT: I don't know whether Welfare wants to go down to New York and board the plane or to go to England.

Q. I didn't get the last name on that.

Q. R. R. A. Like R. R.

THE COURT: And he last worked at the . . . .? A. I can tell you where he works in England; . . ., Dorset, England.

Q. Does he have any plans to return? A. Nothing definite; like he has no job here or anything.

MR. TOBIN: That is all I have, your Honor. . . . Has he ever given you any money toward the support of the child? A. I didn't want him to have any claim on the baby.

THE COURT: He knows it's his baby though? A. Yes, he has seen the baby.

THE COURT: He has seen the baby and knows it's his.

MR. TOBIN: Nothing further, your Honor.

THE COURT: All right, you may step down. You're excused.

* * * * *

CASE VI

WELFARE	:	TENTH
COMMISSIONER	:	CIRCUIT COURT
VS.	:	HELD AT
	:	NEW LONDON
	:	
A. Ar.	:	ON FEBRUARY
	:	1, 1973

Before:

Appearances:

Robert D. Tobin, Esq.
For the Welfare Commissioner
2 Union Plaza
New London, Connecticut

No apperance for the
Defendant

* * * * *

A. Ar. taking the witness stand, having been first duly sworn, testified as follows:

COURT CLERK: State your name.

THE WITNESS: A. Ar.

COURT CLERK: Where do you live?

THE WITNESS: . . . Groton.

COURT CLERK: Thank you. You may be seated.

DIRECT EXAMINATION
BY MR. SMITH:

Q. Miss Ar., you are the mother of a child born October 31, 1972? A. Yes.

Q. And your child was a recipient of public assistance at some time? A. Yes.

Q. Would you name the father of the child. A. No.

THE COURT: Will you name the father? A. No, I don't want to.

THE COURT: Well, under the statute you can serve a year in jail or be fined $200.00 if you refuse to, under oath. A. I don't want the father named.

THE COURT: You don't want the father named. Well, maybe if I give you a year in jail, you will think it over. That is what the statute says. If you refuse to divulge knowledge, you can spend a year in jail. A. I don't want the father named.

THE COURT: You'd better sit down for a minute and think it over because I am liable to send you to jail for a year, if you don't want to. Step down for a moment.

* * * * *

THE COURT: Miss Ar., are you still going to refuse to name the father? A. Yes.

THE COURT: All right, I have told you what you're subject to. A. I realize it.

THE COURT: Do you think it would be much better for you to take a year in jail? A. Not really, but I'd rather not give the father's name.

THE COURT: Well, I don't make the law. The Legislature makes the law. That is what they say, that you divulge knowledge under oath or else you spend a year in jail. It isn't the thing I want to do anymore than you want to do it. After all, somebody is the father of the child. It's his responsibility to support the child rather than the State support the child. A. The State is not supporting him. I am not on the State any longer.

THE COURT: But the State did support the child at some time. The State is entitled to be reimbursed for

the money they expended for the support of the child. A. I can reimburse them.

THE COURT: Well, you reimburse them. That is all the State is interested in, the reimbursement. How much money is owed the State on the Ar. matter?

MAN FROM WELFARE DEPARTMENT: We can't tell you at this time, your Honor. We weren't prepared. There was no mention of reimbursement.

MR. TOBIN: May it be continued a week?

THE COURT: I will continued it one week to see what can be worked out on this matter. If nothing can be worked out, you're going to have to go to jail. Continue it one week to February 8th.

MR. TOBIN: Thank you, your Honor.

* * * * *

CASE VII

WELFARE	:	CIRCUIT COURT
COMMISSIONER	:	SEVENTEENTH CIRCUIT
	:	AT BRISTOL
VS.	:	
	:	
E.B.	:	DECEMBER 21, 1972

Before:

The Honorable J. Robert Lacey, J.

Appearances:

For the Plaintiff; Richard Alden, Esq.
238 Main Street
Bristol, Connecticut

* * * * *

E.B. of Terryville, Connecticut, having first been duly sworn, testified as follows:

DIRECT EXAMINATION
BY MR. ALDEN:

THE COURT: How old are you?
THE WITNESS: Twenty (20).
THE COURT: Twenty? Go ahead Mr. Alden.
Q. Is it Miss or Mrs.? A. Miss.
Q. And Miss B, are you the mother of a child born around April 25, 1971? A. Yes.
Q. Is that a boy or girl? A. Boy.
Q. And is that child the recipient of welfare, public assistance? A. Yes.
Q. How long has that child been a recipient of welfare? A. Since he was born, the day he was born.
Q. And has the Welfare Department asked you to name the father of that child? A. Yes.
Q. Have you named the father of that child? A. No.
Q. Can you tell us why you haven't named him? A. Yes. Because I don't know who he is.
THE COURT: You do not know who the father of this child is?
THE WITNESS: No.
THE COURT: Is that because you had had relations on or about the time of conception of this child with others besides the individual who is the true father? Do you know what I'm taking about?
THE WITNESS: No.
THE COURT: No? Why don't you know who the father of this child is?
THE WITNESS: I was having trouble with my parents. . . . (Child crying in the courtroom).
THE COURT: Will you kindly remove the child from the courtroom, please? You may go into another

room. Miss B you were having trouble with your parents?
THE WITNESS: Yes.
THE COURT: And what has that to do with the paternity of this child?
THE WITNESS: Well, I went out that night.
THE COURT: What?
THE WITNESS: I went out that day—that night and I was walking in front of the bowling alleys in Winsted and this guy picked me up, and we were drinking.
THE COURT: A guy picked you up. You had never seen him before?
THE WITNESS: No.
THE COURT: In an automobile?
THE WITNESS: Yes.
THE COURT: And you went with him and went drinking.
THE WITNESS: Yes.
THE COURT: You mean drinking liquor?
THE WITNESS: Yes.
THE COURT: And you had relations with him, physical relations?
THE WITNESS: Yes.
THE COURT: You never saw him again? Is that it?
THE WITNESS: Yes.
THE COURT: Did he make any disclosure as to who he was or where he came from?
THE WITNESS: No. I never saw him again.
THE COURT: Never saw him again. But at the time you did see him and while you were with him, did he tell you where he came from, whether he lived in Winsted or anything about where he lived or worked or what his name is—identity?
THE WITNESS: No.
THE COURT: No, he didn't. Go ahead.

BY MR. ALDEN:

Q. This was the man—this was the only man? A. Yes.

Q. I see.

MR. ALDEN: I don't think there is anything else I can ask.

THE COURT: What day did you discover you were pregnant with child?

THE WITNESS: September, late September.

THE COURT: And did you, after that occasion when you were with this individual in Winsted, did you have physical relations with anyone else?

THE WITNESS: No.

THE COURT: So you are reasonably sure then that the father of this child is the unknown male that you had relations with in Winsted?

THE WITNESS: Yes.

MR. ALDEN: I have nothing further.

THE COURT: Step down.

Is this party excused, Mr. Alden?

MR. ALDEN: Yes, your Honor.

THE COURT: You may go.

THE WITNESS: Thank you.

CASE VIII

WELFARE	:	CIRCUIT COURT
COMMISSIONER	:	SEVENTEENTH CIRCUIT
	:	AT BRISTOL
VS.	:	
	:	DECEMBER 21, 1972
T. J.		

Before:

The Honorable J. Robert Lacey, J.

Appearances:

For the Plaintiff; Richard Alden, Esq.
238 Main Street
Bristol, Connecticut

* * * * *

T.J. of , Bristol, Connecticut, having first been duly sworn, testified as follows:

DIRECTION EXAMINATION

BY MR. ALDEN:

Q. How old are you?

THE WITNESS: Twenty-two (22).

THE COURT: Twenty-two?

THE WITNESS: Yes.

THE COURT: And where do you live?

THE WITNESS: . . . .

THE COURT: You may proceed.

Q. T., is that Miss or Mrs.? A. Miss.

Q. And are you the mother of a child born in New Britain on or about September 14, 1970? A. Yes.

Q. And is that child the subject—recipient of public assistance in the State of Connecticut? A. Yes.

Q. Since she was born? Is it he or she? A. She.

Q. Since she was born? A. Yes.

Q. And have you refused to disclose the name of the father of that child? A. One time I have.

Q. They asked you once and at that time you refused? A. Since I had been in Bristol. In New Britain they told me I didn't have to say anything.

Q. Is this the Welfare Department in New Britain? A. Mmm Hmm.

THE COURT: Did you make a statement, in writing, under oath, to anyone from the Welfare Department as to who the father of the child is?

THE WITNESS: No.

THE COURT: Were you asked to?

THE WITNESS: Yes.

THE COURT: You were asked to. Did you refuse to?

THE WITNESS: Yes.

THE COURT: Why did you refuse?

THE WITNESS: Because at the time I didn't want to say anything.

THE COURT: What?

THE WITNESS: I didn't want to say anything at that time.

THE COURT: Are you prepared now to disclose, under oath?

THE WITNESS: Well, I would like to have this continued until I get a lawyer.

THE COURT: For what purpose?

THE WITNESS: Why? I have reasons.

THE COURT: You have reasons! Well, let me tell you that under the law you, by disclosing who the father is, do not subject yourself to any criminal penalty. And I am telling you that for your own protection.

THE WITNESS: Yes, sir.

THE COURT: You cannot be prosecuted for any act of illicit intercourse by reason of the fact that you

disclose here, on the witness stand, the parentage of this child. Do you understand that?

THE WITNESS: No. I don't understand what you said.

THE COURT: I will explain it as carefully as I can.

You have been called here to be examined under oath as to who the father of this child of yours is.

THE WITNESS: Yes.

THE COURT: And I ask you, are you now prepared to disclose the father of the child?

THE WITNESS: Well, not at this time, not until I. . . .

THE COURT: What?

THE WITNESS: Not at this time.

THE COURT: Not now?

THE WITNESS: No, because I would like to get a lawyer first.

THE COURT: Well, what is a lawyer going to do for you?

THE WITNESS: Because there is like a few things I have to discuss besides that. This concerns telling the father of the baby.

THE COURT: Well, this child is the subject of public assistance. The State is paying for it, for the support of this child and under the law if you neglect to bring an action to get support from the father of this child, as the law requires, then the state, the town or whatever agency is furnishing support may bring an action in its own name against the alleged father.

But unless and until there is some disclosure by you as to the identity of that person, the State who is paying out the money or the municipality is powerless to act. You are being examined under oath and you are bound to disclose. You do not incur any criminal penalties by any disclosure. You have immunity under the statute. So I direct you to answer now, under oath, as to the paternity of this child. Go ahead.

THE WITNESS: L. B.

THE COURT: Where does he live?

THE WITNESS: In New Britain. I don't know whereabout.

THE COURT: In New Britain. How long had you known him prior to the time you had physical relations?

THE WITNESS: I've known him since I have been up here, about three years.

THE COURT: Is he a negro or caucasian?

THE WITNESS: Negro

THE COURT: Was he employed any where at the time that you were socializing with him?

THE WITNESS: No.

THE COURT: He was unemployed?

THE WITNESS: Yes. He was unemployed.

THE COURT: What? He was working?

THE WITNESS: He wasn't.

THE COURT: He wasn't working. Was he going to school?

THE WITNESS: No, he wasn't. Wasn't doing anything.

THE COURT: Wasn't doing anything. Did you previously live with your parents?

THE WITNESS: I live by myself.

THE COURT: You live by yourself. Where?

THE WITNESS: . . . .

MR. ALDEN: I have nothing further.

THE COURT: Nothing further. You may step down.

Is this matter, T.J. . . . excused?

MR. ALDEN: Yes, she is, your Honor.

THE COURT: You are free to go ma'am.

CASE IX

WELFARE	:	CIRCUIT COURT
COMMISSIONER	:	SEVENTEENTH CIRCUIT
	:	AT BRISTOL
VS.	:	
	:	
D. P.	:	DECEMBER 21, 1972

Before:

The Honorable J. Robert Lacey, J.

Appearances:
For the Plaintiff;

Richard Alden, Esq.
238 Main Street
Bristol, Connecticut

* * * * *

D.P., Bristol, Connecticut, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ALDEN:

THE COURT: How old are you ma'am?

THE WITNESS: Twenty (20).

THE COURT: Twenty. You may proceed Mr. Alden.

Q. Is it Miss or Mrs.? A. Mrs.

Q. And are you the mother of a child born out of wedlock around May 2, 1971? A. Yes.

Q. Is that a boy or girl? A. Girl.

Q. And is that child a recipient of public assistance from the Welfare Department? A. Yes.

Q. And how long has she been such? A. For about sixteen (16) months.

Q. And you are now married? A. Yes.

Q. And have you been asked by the Welfare Department to disclose the name of the father of your child? A. Yes.

Q. And have you refused to disclose it? A. I told them I didn't know.

THE COURT: You didn't know the identity of the father?

THE WITNESS: No, I don't know who the father is.

THE COURT: Why?

THE WITNESS: Because I was going out with more than one guy at the time.

THE COURT: You were what?

THE WITNESS: I was going out with more than one guy at the time.

THE COURT: You were going out with more than one guy at the time. Well that indicates then that perhaps you were having relations with a number of persons.

THE WITNESS: Yes.

THE COURT: Well, the name to attach to that is that you were promiscuous. Do you know what that means?

THE WITNESS: No.

THE COURT: Where and when did you have relations that resulted in your pregnancy?

THE WITNESS: Where? What do you mean "Where"?

THE COURT: Where and when did you have relations with some male that resulted in your pregnancy?

THE WITNESS: It had to be in the month of June.

THE COURT: Had to be in June. Well, don't you have any recollection of who you were with?

THE WITNESS: I was going out with more than one.

THE COURT: You were going out with more than one.

Were you asked by any representative of the welfare agency to disclose the identity of the person with whom you had relations that resulted in your pregnancy?

THE WITNESS: Yes.

THE COURT: And you couldn't name him.

THE WITNESS: No, I can't.

BY MR. ALDEN:

Q. D, wouldn't that be around September of 1970? The child was born in May of 1971. A. Yes. It was June or July. It was around there. I found out in September I was pregnant.

Q. When you said "more than one," do you mean two or. . . . A. No. I was going out with several guys.

Q. By "several" how many do you mean, approximately? A. About four or five.

Q. You were going out with them around the summer of 1970, September of 1970? A. Yes, around there.

Q. And you had relations with all five, the four or five? A. Mmm Hmm.

Q. Are they all from Bristol? A. No. New Britain.

Q. All from New Britain? Do you know any of their whereabouts? A. No, I don't. I haven't heard from any of them.

Q. And you live here in Bristol now? A. Yes.

MR. ALDEN: I have nothing further, your Honor.

THE COURT: Well, when you became pregnant with child. . . .

THE WITNESS: Mmm Hmm.

THE COURT: . . . didn't it occur to you that somebody was responsible for that condition?

THE WITNESS: Oh, yes.

THE COURT: And you were concerned, weren't you?

THE WITNESS: Yes.

THE COURT: Were you?

THE WITNESS: Mmm Hmm.

THE COURT: And did you look for that individual?

THE WITNESS: No.

THE COURT: You didn't know who it was?

THE WITNESS: No. You can't look for somebody that I don't know who it is.

THE COURT: And you want the Court to understand that these "several guys" as you called them, you had relations with and you don't know who they are?

THE WITNESS: No.

THE COURT: She was promiscuous to say the least.

Step down.

Is D.P. excused?

MR. ALDEN: Yes, your Honor.

THE COURT: What is her name now that she's married?

MR. ALDEN: That is her name, her married name.

THE COURT: You are excused.

CASE X

CV 2-738-94960

NICHOLAS NORTON,	:	CIRCUIT COURT,
WELFARE COMM.	:	SECOND CIRCUIT
STATE OF CONNECTICUT	:	
	:	
V.	:	AT BRIDGEPORT
	:	
MARIE LARRACUENTO	:	NOVEMBER 23, 1973

MEMORANDUM OF DECISION

The within action has been brought by the Welfare Commissioner of the State of Connecticut to compel the defendant to disclose the name of the putative father of one Todd Alexander Larracuento who was born to the defendant, Marie Larracuento, of Bridgeport, Connecticut on July 29, 1972. The action was drawn in the form of a petition pursuant to the provisions of Section 52-440b (a) of the Connecticut General Statutes.

The court finds the following facts:

Said Todd Alexander Larracuento was born to the defendant on July 29, 1972 at the Park City Hospital in Bridgeport, Connecticut. On May 8, 1973 the defendant made application to the State Welfare Department seeking Aid For Dependent Children benefits, which application was duly approved on May 9, 1973. She and her child have been the recipients of state welfare benefits from said date to the date of this hearing. At the time the application was filed the defendant did not disclose the name of the putative father although the application does set forth a request for such a disclosure. Nor was any reason given for her refusal to so disclose.

On or about August 14, 1973, Kenneth Griswold, a welfare department investigator, conducted a further interview with the defendant who still refused to name the father of her child. According to the testimony of Mr. Griswold, no reason was given by her in explanation of her refusal to divulge the putative father's name. The father's name is still unknown to the State Welfare Department.

At the time of trial the benefits received by the defendant and her child amounted to $84.49 per month. The customary benefit which would normally be received by the defendant and her child would have amounted to $204.49 per month. However, at the time the application was filed by the defendant, she did disclose that she was receiving support income in the amount of $120.00 per month. This latter amount was, therefore, deducted from what the normal benefit would have been ($204.49), leaving a net figure of $84.49 per month, which sum has been paid by the Welfare Department since May 9, 1973. According to the testimony of Mr. Griswold, the Welfare Department considers the amount of any benefit so paid (whether it be $204.49 or $84.49) to be an amount which is attributable one-half (½) to the mother and one-half (½) to the child. However, if the mother were self-supporting, or had independent financial means, and the child alone was in need of assistance the State Welfare Department would normally provide the sum of $80.56 per month under the A.F.D.C. program for said child's support.

It was Miss Larracuento's testimony, which the court finds credible, that the reason she did not disclose the name of the putative father to the Welfare Department was because he has been voluntarily providing support for said child in the amount of $120.00 per month; that he has faithfully paid this amount to her on a semi-monthly basis ($60.00) since

the child was born; that she disclosed the monthly payment of $120.00 to the Welfare Department when she first sought assistance under the A.F.D.C. program; that the putative father is married and has a wife and five (5) children who are unaware of the situation and she does not wish to expose either his wife or the children to the knowledge of such an unfortunate event; that he, the putative father, has acknowledged in writing that he is the father of the child (which written acknowledgement counsel for the defendant represented to the court has been turned over to him by the defendant for safekeeping with authority to turn the same over to the State Welfare Department should the putative father leave the jurisdiction at any time in the future and fail to carry out his support obligation); and that for all of the aforesaid reasons she would be reluctant to disclose his name at the present time.

The issue before the court is whether it should order the defendant to disclose the name of the putative father in order that an action to establish paternity of said child may be instituted.

The within action was brought pursuant to Section 52-440b (a) of the Connecticut General Statutes, Revision of 1958, as amended. The statute, together with sub-section (b) setting forth the penalty provision for anyone refusing to disclose such information, provides as follows:

> Sec. 53-440b. [*sic*] Compelling disclosure of name of putative father and institution of action. (a) if the mother of any child born out of wedlock, or the mother of any child born to any married woman during marriage which child shall be found not be issue of the marriage terminated by a divorce decreee of any court of competent jurisdiction, fails or refuses to disclose the name of the putative father of such child under oath to the welfare commissioner if such child is a recipient of public assistance, or to a selectman of a town in which

such child resides, if such child is a recipient of general assistance, or otherwise to a guardian or a guardian ad litem of such child, such mother may be cited to appear before any judge of the circuit court and compelled to disclose the name of the putative father under oath and to institute an action to establish the paternity of said child.

(b) Any woman who, having been cited to appear before a judge of the circuit court pursuant to subsection (a), fails to appears or fails to disclose or fails to prosecute a paternity action may be found to be in contempt of said court and may be fined not more than two hundred dollars or imprisoned not more than one year or both.

The issue of the constitutionality of the above cited statute was recently decided by a three judge court in the case of *Donna Doe et als v. Nicholas Norton, individually, and as Welfare Commissioner of the State of Connecticut,* Memorandum of Decision, dated and filed September 5, 1973, U.S. District Court, Hartford, Connecticut, Civil No. 15579. Blumenfeld, District Judge, and No. 15589 (companion case). In a well reasoned and detailed opinion the court found that the statute in question was not in irreconcilable conflict with the provisions, basic purposes and objectives of the A.F.D.C. Act (Social Security Act) (under which the State Welfare Department receives financial assistance from the Federal Government together with matching funds from the State of Connecticut) so as to be invalid under the supremacy clause; that the *unwed* mother's right to privacy (as distinguished from marital privacy) is not unduly impinged upon, nor, in view of the immunity grant extended to the unwed mother as well as the putative father (Sec. 52-435 (b) and (e) of C.G.S.), is the Fifth Amendment privilege against self incrimination violated; that what might appear to be a discriminatory classification based upon illegitimacy of children, when viewed in light of the fact that the

statute operates to the advantage rather than to the disadvantage of such children, is not an invidious discrimination in violation of the equal protection clause of the Fourteenth Amendment; nor is the classification of "unwed mothers of children receiving public assistance" a discriminatory one when the statute itself provides that disclosure of the putative's father's name may be ordered to be given not only to the welfare department, in the case of children receiving public assistance, but also to the guardian or guardian ad litem of any such children.– in other words the classification bears a rational relationship to a legitimate state purpose, i.e. to enforce the obligation of the father to support the child whether the child is a recipient of public assistance or in the custody of a guardian who may be assuming said child's support. A reading of the above cited case leaves no doubt that the constitutionality of the statute has been thoroughly examined and affirmed.

A preliminary question which presents itself to the court before any determination of whether the mother should be compelled to disclose the name of the putative father is whether the court is vested under the statute with any discretion in the matter or whether an order compelling disclosure must be ordered regardless of the circumstances. The pertinent portion of Sec. 52-440b (a) reads as follows:

> "... such mother *may* be cited to appear before any judge of the circuit court and compelled to disclose the name of the putative father under oath. ..." (Emphases supplied)

There is no question but what from the language used there is a discretion vested in the issuing judge as to whether a citation should or should not issue in the first instance. As to whether the meaning of the term "may be" was also intended by the legislature to carry over to the word "compelled" is not entirely clear.

However, the court is of the opinion that it was so intended. In fact a reading of sub-section (b) of the same statute discloses that the legislature did in fact use the term "*may be* found in contempt" when discussing the punishment to be meted out to a mother who "fails to appear or fails to disclose" (the name of the putative father) (emphasis supplied). A reading of the majority opinion of *Donna Doe et als v. Nicholas Norton, individually and as Welfare Commissioner of the State of Connecticut*, supra, also makes it clear that the U.S. District Court was of the opinion, namely, that the legislature vested discretion in the trial court as to whether or not sanctions should be imposed in the face of a refusal on the part of an unwed mother to disclose the putative father's name:

> "... this does not mean that the sanctions permitted by the statute are likely to be woodenly imposed without regard for impact upon the family.
> We are unwilling to assume such an unthinking automatic exercise of judicial power by the state judiciary. In the event of a mother's failure to disclose the father's name, the statute provides that she "may" be found in contempt and "may" be fined or imprisoned. This authorizes the exercise of sound judicial discretion to determine whether in a particular case non-disclosure warrants a finding of contempt or the imposition of penalties. In this regard, the statute is in marked contrast to other Connecticut disclosure statutes, which provide that in the event a person obligated to furnish information refuses to do so, a state judge "shall commit such person to jail until he testifies..." *E.g.*, Conn. Gen. Stats. 17-2a (witnesses at welfare department hearings); Conn. Gen. Stats. 12-2 (witnesses at tax department hearings); Conn. Gen. Stats. 30-8 (witnesses at liquor control commission hearings). We need not anticipate at this point the variety of situations that will confront the state circuit court judges before whom contempt citations will be sought. It is sufficient in this litigation, which attacks the statute on its face, to note that the statute, in its application, does not preclude and, indeed, appears to specify the exercise of sound judicial discretion." (Footnote 14, Page 16a)

This court is, likewise, of the opinion that it does have discretionary power to determine whether, under all of the circumstances presented, an order ought to be issued to the defendant to make the disclosure which is sought by the plaintiff, or otherwise be exposed to such punishment as is set forth in the statute.

The real question at issue then becomes one of whether, under all of the facts and circumstances as proven, the court should find under its discretionary power that the mother should be compelled to name the putative father.

A weighing of all of the testimony elicited from the witnesses called by the State has not convinced the court by a fair preponderance of the evidence that the plaintiff is, in fact, paying any substantial financial assistance for the support of the defendant's child. The amount of the putative father's monthly payment, as voluntarily made by him to satisfy his legal obligation to support said child ($120.00 per month), has been faithfully paid to the mother since the child was born. In computing the amount of financial aid which the mother and child would normally be entitled to receive under the State's A.F.D.C. program ($204.49 per month), the State did deduct the support payment of $120.00 per month made by the putative father, leaving a net benefit payment by the State of $84.49 per month. Although it was the testimony of the State Welfare Department investigator that the State considers one-half of this net amount to be for the child and

one-half for the unwed mother, i.e. $42.25 to each, the percentage division is obviously an arbitrary allocation when viewed in the light of the same witnesses' testimony that if the mother were financially independent and had no need for public assistance, the maximum amount which would be paid for support of the child on a monthly basis would normally be $80.56 per month. When the child is already receiving support money in the sum of $120.00 per month as paid by the putative father, it is difficult to understand the conclusion of the Welfare Department that any of the $84.49 per month can be said to be allocable to support of the child. Certainly the payment which the putative father makes can only be for the sole benefit of the child. The putative father clearly has no obligation to support the child's mother, nor is the mother, under the reasoning of *Bourque v. Commissioner of Welfare*, 6 Conn. Cir. Ct. 685, 308 A.2d 543 (1972), entitled to appropriate any of said sum for the benefit of herself or any other children she might have. The court is not persuaded from the testimony of the State Welfare investigator that the so-called 50-50 allocation of the net benefit of $84.49 is anything more than an arbitrary division without any basis in fact. In other words, and borrowing at the same time from the concept of Judge Newman as set forth in a separate concurring opinion, the State's interest should be of such a substantial nature as to outweigh the mother's constitutionally protected right to privacy in sexual and child rearing matters. In fact, Judge Newman suggests that a disproportionate imbalance between the interest which the State seeks to protect and the mother's interest in the right to privacy may well pose a constitutional question. Without deciding whether such an issue was in fact presented to this court, or whether the application of the statute in this instance makes it so clearly unconstitutional that it ought to be ruled

upon adversely to the State at this level, the court does take the position that the State's financial interest accruing from the monthly benefits paid in behalf of the child is so insignificant, if it exists at all, that under the circumstances the court ought not require the defendant to disclose the name of the putative father. The primary purpose of the statute is to protect the State's coffers. The court is not convinced that the State's financial resources have been invaded to any substantial degree, if at all, insofar as support payments for the defendant's child are concerned.

Counsel for the State has urged the court to compel such a disclosure for the following reasons:

(1) The primary purpose of the statute is to enforce the obligation of the father to support his own child and, thereby, secure to the child the long term interest of knowing the identity of his father so that his future support needs may be met.

(2) If the putative father dies, the child would be without remedy unless such an adjudication of paternity is had.

(3) Should the putative father leave the jurisdiction, the child might be forever prejudiced by such lack of adjudication.

(4) The running of the Statute of Limitations could prejudice the child's future financial position.

In so far as the possible demise of the putative father in the future might work a hardship upon the child where no adjudication of paternity has been had, it is not always possible to provide for the contingency of death in any event. Assuming an adjudication of paternity were to be obtained in advance of his demise, if the father should die without assets a recorded court order of support would be meaningless. In fact, the putative father's present support payment, admittedly a generous one, if used wisely and frugally by the

defendant, could turn out to have a total worth of much greater proportions than might well be accomplished by virtue of a court order.

In the meantime, if the father of the defendant's child refuses to pay said amount in the future, or reduces said sum to an amount where it is obvious that the State is being compelled to contribute a substantial amount for the child's support, the change in circumstances might well warrant the granting of a petition similar to the one before the court. Obviously, so long as support payments are being made the State [*sic*] of Limitations will not be tolled, not, if the father removes himself to another jurisdiction will the Statute run to the prejudice of the State.

The court is of the opinion that, under all of the facts and circumstances appertaining at this time, the ends of justice will best be served by not compelling the defendant to make the disclosure requested in the instant petition.

Accordingly, the requested order of disclosure is denied and the petition is dismissed.

/s/ Henebry
Henebry, J.

Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-6033

SHARON ROE AND DOROTHY POE, ON BEHALF OF THEMSELVES AND OTHERS SIMILARLY SITUATED, APPELLANTS

v.

NICHOLAS NORTON, INDIVIDUALLY, AS COMMISSIONER OF WELFARE OF THE STATE OF CONNECTICUT, AND ON BEHALF OF OTHERS SIMILARLY SITUATED, APPELLEE

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

BRIEF OF THE APPELLEE

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SUMMARY OF ARGUMENT

Section 52-440b of the General Statutes of Connecticut, Revision of 1958 does not conflict with either the letter or the spirit of the Social Security Act. Rather it acts to further one of the purposes of that act by providing for the disclosure of the identity of the putative father — information which is essential to carrying out the policy of Title 42 U.S.C. Section 602(a)(17) to establish the paternity of illegitimates and secure paternal support for them.

Section 52-440b does not violate any of the rights of personal privacy guaranteed under the First, Third, Fourth, Fifth, Ninth and Fourteenth Amendments of the United States Constitution. The Statute seeks the disclosure from mothers of the identity of the fathers of their children in an effort to protect the welfare of children. The purpose of the statute is to aid the State in its comprehensive scheme to protect the interest of children, which is of a paramount interest to the State of Connecticut. In carrying out this state policy, Section 52-440b does not trample upon the Constitutional rights of mothers, such as the Appellants.

The Appellee argues that the Appellant-mothers do not have rights which fall within the boundary of the right of privacy. Even if any rights of the Appellant-mothers do touch upon the boundary of privacy, the Appellee's position is that such rights are not so fundamental and are not so absolute as to be violated by the provisions of Section 52-440b. It is the further position of the Appellee that if the Appellant-mothers' desire to keep secret the names of the fathers of their children falls within the boundary of the right of privacy, its regulation is justified by the interest of the State of Connecticut in protecting the welfare of children, whether such interest is characterized as "compelling" or otherwise. Such interest is

found in Section 52-440b and such statute is narrowly drawn to express this legitimate state interest.

When weighed against the government's power of inquiry pursuant to a legitimate governmental task, the provision of Section 52-440b which requires the Appellant-mothers to disclose the names of the fathers of their children does not contravene any right to remain silent protected by the First Amendment of the United States Constitution. The requirement of disclosure under Section 52-440b is not compulsory and may be applied in accordance with the sound judicial discretion of the Connecticut Circuit Court. The provision of Section 52-440b which states that the Appellant-mothers may be compelled to institute paternity proceedings is also not compulsory, falls under the Connecticut Circuit Court's power to exercise sound judicial discretion, and is no more than the Connecticut legislature's expression of a subrogation claim.

Substantively, the reasonableness of Section 52-440b does not violate the Due Process Clause of the Fourteenth Amendment of the United States Constitution. In its application, the statute permits the Connecticut Circuit Court to exercise sound judicial discretion. Nor does the statute interfere with the exercise of due process procedural standards. As regards this latter point, Section 52-440b is not too broad and contains standards which protect any due process right that the Appellant-mothers have a right to exercise under the Fourteenth Amendment. In addition, the statute does not preclude the following: notice, the right to counsel, a meaningful hearing, the opportunity to present evidence, and a right of appeal.

The statute in question does not violate any "fundamental right" to privacy. Merely by having had an illegitimate child the mother's situation has already become public knowledge to some extent. There is little "privacy" left to be violated

in such cases; however, the interests of the illegitimate child to the establishment of paternity and support and of the state for recoupment of public funds expended for AFDC certainly outweigh that of the mother in privacy. Further, the Connecticut laws provide the mother with immunity from criminal prosecution for any matter about which she testifies in connection with paternity proceedings so she is not required to incriminate herself. The statute does not involve any cruel or unusual punishment as there is no suspension of AFDC benefits for failure to comply and the imposition of contempt for failure to testify is a time-honored sanction.

The law is based upon an inherently suspect classification: rather than discriminating against illegitimates Section 52-440b is part of a general plan to place them upon an equal footing with legitimates and to benefit them; naturally this statute is directed only against mothers since they are in the unique position of being the only ones with information regarding the child's father — such a situation of limited information does not occur regarding other legally liable relatives; and the statute is not directed simply against the poor as is apparent from its face. In any case, the interest of the illegitimate child in the establishment of his paternity and support and of the state in recouping money paid for public assistance is a compelling state interest which is rationally furthered by this law. Thus, there is no denial of equal protection.

HISTORY OF THE STATUTE

It is impossible to institute a suit to establish the paternity of a minor child unless you know the name of the putative father, who is the potential defendant who must be served with civil process. This proposition sounds simplistic and elementary but it is the root of the problem facing the Court in this action.

For a long time prior to the decisions in *Doe* v. *Shapiro*, 302 F. Supp. 761 (Conn. 1969) and *Doe* v. *Harder*, 310 F. Supp. 302 (D. Conn.), the Appellee Welfare Commissioner handled the problem of the non-disclosing mother of an illegitimate child by terminating the public assistance benefits of the mother and the child. After this decision, the Appellee commenced to cut off benefits to the mother but not to the child. These procedures were held invalid by the Federal Courts basically on the theory that by so acting the Welfare Commissioner was adding a condition to A.F.D.C. eligibility not provided for in the Federal Social Security Act, and, in effect, was visiting the sins of the mother upon the child.

In Connecticut there is a three year statute of limitations with respect to paternity suits, i.e., three (3) years from the birth of the child or three (3) years from the cessation of support by the putative father, *Sections* 52-435a *and* 52-590 *of the General Statutes of Connecticut, Revision of* 1958, or one (1) year after judgment in an action for dissolution of marriage when a child born during marriage has been determined not to be the legitimate issue of such marriage. *Section* 46-26*b(b) of the General Statutes of Connecticut, Revision of* 1958. Of course, absence of the defendant-putative father from the jurisdiction can be considered as a tolling mechanism of the statute of limitations as provided in *Section* 52-590 *of the General Statutes of Connecticut, Revision of* 1958.

The protection of minor children, their rights and their status of legitimacy is a matter of great interest and import to the State of Connecticut. Thus, the legislature has again recently and formally recognized this by providing for the appointment of an attorney to represent children in actions for the dissolution of marriages wherein the court determines that the interests of minor children are not being adequately protected and that such appointment is in the best interest of

the children. *Connecticut Public Act No.* 73-373, *Section* 16 (1973).

It is very common and in many instances necessary for the Juvenile Courts of this State to appoint separate attorneys to represent the interests of minor children in actions wherein their parents are charged with neglect or child abuse, or in actions in that forum to terminate parental rights.

The severance of welfare benefits having been precluded as a means of ascertaining the identity of the father of an illegitimate child, the legislature determined that it would be proper to cause these women to be cited in before the Connecticut Circuit Court to disclose the name of the putative father. This is an action independent entirely and not connected to welfare eligibility. This is the first stage of the legal process of bringing a paternity case to trial. Paternity or Bastardy matters in Connecticut are civil in nature and rules respecting civil actions apply. *Copes* v. *Malcarne*, 118 Conn. 304, 305 (1934); *Pelak* v. *Karpa*, 146 Conn. 370, 372 (1959); *Underhill* v. *Bennett*, 4 Conn. Cir. Ct. 443, 444 cert. denied, 155 Conn. 715 (1967).

The legislature in the furtherance of the civil objectives of the paternity statutes has provided for immunity from criminal prosecution for the mother and putative father. *Sections* 52-435*b and* 52-435*c of the General Statutes of Connecticut, Revision of* 1958.

As is contained in the stipulation filed by counsel in the case at bar, it is our opinion and contention that the statute in question in this case, and the sanctions provided therein are essentially civil in nature. See Appendix, page 56. The Attorney General would not take a position, in the event that the sanctions were invoked by the Connecticut Circuit Court, other than that the mother could purge herself by disclosing the name of the putative father.

In times long gone by, the interest that a mother had was a pecuniary one, and indeed paternity actions were conceived and authorized to allow the mother to compel the putative father to assist her in the maintenance of the child. *Van Epps* v. *Redfield*, 68 Conn. 39, 47 (1896). However, first with the advent of town welfare, and now with the predominance of federally funded State Welfare Programs (A.F.D.C.) the pecuniary interest has in many cases become one that the government is interested in, as well as the mother. In these times, indeed, the state or any town interested is authorized to institute or continue paternity proceedings. *Section* 52-440*a of the General Statutes of Connecticut, Revision of* 1958.

But, aside from the current pecuniary matter of support, there are other valuable, existing and potential rights, that the illegitimate child has, or may have, that demand the ascertaining and establishing of his paternity.

He has the potential right to share in the Social Security Benefits and Veterans Benefits derived through a wage earning father who dies, and the rights of the illegitimate child to be treated without discrimination in favor of a legitimate child have recently been set forth and established by the United States Supreme Court, in affirming the judgment in *Richardson* v. *Davis*, 342 F.Supp. 588 (U.S.D.C. Conn. 1972). This non-discrimination between legitimate and illegitimate children is the trend in the law. For other instances of equal benefits to these two classes of children, see *Ruling on Application for Preliminary Injunction, Blumenfeld,* Ch. J., page 14 of Appendix.

The status of legitimacy, or of having knowledge and proof of one's paternity is a real and substantial asset to a person, perhaps more so in later life than in the earlier years. It means, for example, that when an application for employment, or security clearance, or a passport, or any of the

myriad of forms that we file in our daily lives, are filled out by an illegitimate child, he can fill in the blanks pertaining to "FATHER", and he does not have to leave them blank raising red flags for more questions to be asked by employers or government officials concerned with processing such forms.

Next we must consider the question of rights that do attach now, or may attach in the future with respect to inheritance. To some extent the legislature has already provided for inheritance rights in children, born illegitimate whose parents thereafter intermarry. *Section* 45-274 *of the General Statutes of Connecticut, Revision of* 1958. It is not inconceivable that our state legislature may specifically provide for full rights of inheritance by a child from its natural and adjudicated father. This certainly would be in line with the trend in the law as noted by Blumenfeld, Ch. J. in his earlier ruling in this case on the application for preliminary injunction. Appendix, page 14.

There exists, under the present state of our law, the valuable status of being the child of an individual male. See *Hartford National Bank & Trust Co.* v. *Prince*, 28 Conn. Supp. 348, 261 A.2d 287 (1969). This was a very illustrative case, although not involving a paternity action as such. This involved an action brought by the trustee under a will and the trial of the case evolved into a species of equitable paternity action which established that a child born to a man's former wife, before a final judgment of divorce, was one of his children, and as such entitled to take under the provisions of his aunt's will that left her estate to the father for his life and upon his death to his surviving children for their lives. Thus, to have one's paternity established by whatever suitable means, probably confers upon the child membership in a class of children who can take estates under documents of testacy.

The Statute: Section 52-440b of the General Statutes of Connecticut, Revision of 1958.

This section is one of several statutes in our law designed to protect and further the rights of children. The provisions for requiring a mother to disclose the identity of the child's father embraces all mothers of illegitimate children, and not just those of any particular class. Thus, it is evident that there is no indivious classification of just some mothers of out-of-wedlock children that would give rise to a discriminatory legislative classification.

The statute has for a purpose the protection and establishment of present and future rights of innocent minor children, as well as the judicially recognized public policy of saving the public from the burden of supporting an illegitimate child. *State* v. *Wolfe*, 156 Conn. 199, 203 (1968 citing *Pelak* v. *Karpa*, supra). The Connecticut Supreme Court in *State* v. *Wolfe*, supra at 203, went on to point out that "in addition to the problem of paternal support for the illegitimate child, the law from early times, has been concerned with its status."

Section 52-440b deals with the rights of the class of illegitimate children. The basic, raw figures available from the Department of Health, State of Connecticut, contained in an exhibit before this court indicate that there were, in the year 1971, 45,633 recorded births in this State. Appendix, page 61. Of these, 4,533 or 9.9% were illegitimate. Appendix, page 61. We are dealing with a substantial class of people. These figures are derived from recorded birth certificates in which no fathers are named. We know from our experience in the Superior Court of Connecticut, Family Relations Session, that the actual number of illegitimate children exceeds this figure. There are many children born to married women where the birth certificates allege that their husbands are the fathers of the children, when in fact they are not. This fact usually

only comes to light when a divorce between the natural mother and presumed father ensues. In this state, a child born during the period of a marriage is presumed to be the legitimate child of the marriage.

Beal v. *Ross*, 11 Conn. Supp. 323 (1972). This recurring problem of de facto illegitimate children became such a prevalent issue in divorce actions that the Connecticut legislature enacted *Section* 46-26b *(b) of the General Statutes of Connecticut, Revision of* 1958, *and Section* 16 *of Connecticut Public Act No.* 73-373 (1973) and the judges of the Connecticut Superior Court changed the rules of pleading in divorce actions so as to require the pleading of all minor children born to the mother since the date of the marriage (Connecticut Practice Book Section 374, as amended September 1, 1970). The earlier provisions had just required that every complaint shall state "whether or not there are minor children of the parties", which permitted the mother or father to make a capricious election as to whether any particular child was in fact issue of said marriage. It can be seen that the legislature and the courts have recognized and continue to provide for handling problems of illegitimate children.

Rights of the Mother vs. Rights of the Child.

Assuming, arguendo, that the illegitimate child has some quantum of rights, we now arrive at the heart of this controversy before the Court. Shall a mother be allowed the unfettered exercise of whatever rights that she alleges to have, or has in fact, when such exercise by the mother has or may have a material effect upon the status, rights and future life of her illegitimate child. To paraphrase a statement attributed to the late, revered Justice Black: a man may have a constitutional right to flail his arms about as he pleases, but the unrestricted exercise of that right is curtailed at the end of my nose. Is not the birth of an illegitimate child, an individual, sui generis, the end of the proverbial nose at which point the unfettered actions of its mother become fettered with the demands of

the best interests of the child? Indeed, the case law and legislative enactments that govern the operation of the Connecticut Juvenile Courts have so declared when parental action is deemed to be abusive or neglectful to minor children. The whole concept of the law governing parent-child relationships is geared to that course of conduct which is in the best interests of the child, and the welfare of the child. *In Re Appeal Of Kindis*, 162 Conn. 239 (1972). Why should a mother be permitted, by her inaction, to cast her child into the eternal caverns of illegitimacy.

I. There Is No Statutory Conflict Between Section 52-440b of the Connecticut General Statutes, Revision of 1958, and the Social Security Act.

In pertinent part Title 42 U.S.C. Section 602 (a)(17)(A)(i) and (ii) reads:

> "(a) A state plan for aid and services to needy families with children *must* . . .
>
> (17) provide —
>
> (A) for the development and implementation of a program under which the State agency will undertake —
>
> (i) in the case of a child born out of wedlock who is receiving aid to families with dependent children, to establish the paternity of such child and secure support for him, and
>
> (ii) in the case of any child receiving such aid who has been deserted or abandoned by his parent, to secure support for such child from such parent (or from any other person legally liable for such support), utilizing any reciprocal arrangements adopted with other States to obtain or enforce court orders for support. . . ."

Section 52-440b of Connecticut General Statutes, Revision of 1958, is narrowly drawn to assist in carrying out the

above program required by Congress. In order to establish the paternity of an illegitimate child and secure support for him it is necessary first that the name of the putative father be available, and that an action be started against him in which, most likely, the mother, if she is not the complaining party, will at least be the chief witness. Thus, the Connecticut statute can hardly be said to conflict with this federal statute.

Nor does there appear to be any other federal statute with which Section 52-440b is in such "direct and positive conflict that the two acts cannot be reconciled or consistently stand together." *Kelly* v. *Washington*, 302 U.S. 1, 10 (1937) *Snell* v. *Wyman*, 281 F.Supp. 853, 869 (S.D. N.Y. 1968) aff'd. 393 U.S. 323 (1969).

As will be discussed below the invasion of privacy involved as a result of the enforcement of this statute is truly minimal and certainly outweighed by the interests of the child and the state. While it is urged by Appellants that this act is inconsistent with the protection of children receiving AFDC which is a major reason for the federal law, this contention is largely a question of policy for the legislature as to what is in the children's best interests. Further, there is no deprivation of AFDC benefits to either child or mother as a result of the Connecticut law. Finally, the fact that the mother may, in the Court's discretion, be held in contempt of court and sent to jail can hardly be argued to invalidate the law here. The court would merely be imposing the time-honored sanction of contempt and imprisonment in a civil proceeding for failure to testify. There is no punishment involved because a woman has borne an illegitimate child. This is "essentially a civil remedy designed for the benefit of other parties and [which] has quite properly been exercised for centuries to secure compliance with judicial decrees." *Shillitani* v. *U.S.* 384, U.S. 364, 368 (1966)

The Connecticut statute involved clearly furthers an

enumerated purpose of the federal AFDC legislation and does not provide the direct and positive conflict with any other federal law which would require the overturning of the statute as contrary to the Social Security Act.

II. Section 52-440b of the General Statutes of Connecticut, Revision of 1958, Does Not Impinge Upon Any Rights So Fundamental or Implicit in the Concept of Ordered Liberty Which Are Constitutionally Protected Under the Right of Privacy.

With respect to the right of privacy question in the case at bar, it is essential to examine three things as follows: one, the origin of the right of privacy; two, whether the Appellants have rights falling within the boundary of the right of privacy; three, whether any rights that the Appellants may have justify regulation under *Section 52-440b of the General Statutes of Connecticut, Revision of* 1958.

A. The right of privacy:

The right to privacy protected by the Constitution of the United States emanates from "penumbras" of the first, third, fourth, fifth and ninth amendments. *Griswold* v. *Connecticut*, 381 U.S. 479 (1965). The right to privacy also finds its roots in the concept of liberty guaranteed by the first section of the Fourteenth Amendment. See *Meyer* v. *Nebraska*, 262 U.S. 390, 399 (1923). In considering the right of privacy as protected by the United States Constitution, the Court in *Roe* v. *Wade*, 410 U.S. 113 at 152, 35 L.Ed. 2d 147, 176-77 (1973), stated the following:

> "The Constitution does not explicitly mention any right of privacy. In a line of decisions, . . . the Court has recognized that a right of personal privacy, or a guarantee of certain areas or zones of privacy, does exist under the Constitution. . . . These decisions make it clear that only

> personal rights that can be deemed 'fundamental' or 'implicit in the concept of ordered liberty,' . . . are included in this guarantee of personal privacy. They also make it clear that the right has some extension to activities relating to marriage, . . . procreation, . . . contraception, . . . family relationships, . . . and child rearing and education." (citations omitted).

Thus, a basic question presented to the Court in this case is whether a mother's desire to keep the name of the child's father secret is so fundamental as to require protection under the Constitutional guarantee of personal privacy irrespective of the child's interest and welfare. Even if such desire on the part of the mother does involve a fundamental right, its regulation may be justified by a "compelling state interest" by way of a statute narrowly drawn "to express only the legitimate state interest at stake." *Roe* v. *Wade*, supra, at 155, 35 L.Ed. 2d 147, 178.

B. The desire to keep secret the names of putative fathers is not within the boundary of the right of privacy:

The inquiry to and the disclosure by the Appellants as required by Section 52-440b does not invade any zone of privacy. Any "embarrassing" information concerning the consenting parents, the Appellants and the fathers of their children, has in large part been widely disclosed before any inquiries under Section 52-440b are made. *Doe* v. *Norton*, 365 F.Supp. 65, 77 (1973). The inquiry does not draw into question the mother's misconduct, but only the identity of the putative father. Id. The lower court in *Doe* v. *Norton*, supra at 77, went on to say the following:

> "The question asked of the unwed mother is, 'Who is the father of your child?' The object of the inquiry is to enforce a familial monetary obligation, not to interfere with personal privacy. There is no intrusion into the

home nor any participation in interpersonal decisions among its occupants, even to the extent held permissible in *Wyman* v. *James*, 400 U.S. 309 (1971). The statute does not forbid an unwed mother to have a man in the house or even in her bedroom. Compare *King* v. *Smith*, supra, 392 U.S. 309. The only restriction it imposes upon either the unwed mother or the biological father to do as they please or make any decisions they wish in whatever relationship they desire to maintain is that the father satisfy his legal obligation to support his own child and that the mother provide what information she possesses useful toward that end."

In view of what was pointed out by the lower court, the Appellants desire to keep secret the names of the putative fathers is not within the boundary of the right of privacy. Consequently, any compulsion placed on the Appellants by Section 52-440b does not impinge on any fundamental rights of the Appellants related to privacy.

C. Regulation and compelling state interest:

The possession and enjoyment of all rights guaranteed under the United States Constitution are not absolute, but are subject to limitations such as the reasonable conditions which may be deemed by the local governing authority essential to the safety, health, good order and morals of the community. *Jacobson* v. *Massachusetts*, 197 U.S. 11, 26 (1905); *Crowley* v. *Christensen*, 137 U.S. 86, 89 (1890); see *Buck* v. *Bell*, 274 U.S. 200, 207 (1927). Limitations on constitutional rights have been recognized with respect to the right of personal privacy guaranteed by the United States Constitution. *Roe* v. *Wade*, supra at 155, 35 L.Ed.2d 147, 178; *Doe* v. *Bolton*, 41 U.S.L.W. 4233, 4236 (1973). It is the Appellee's position that any constitutional rights of personal privacy as alleged by the Appellants in the case at bar are not so fundamental and are not so absolute as to be

violated by the provisions of *Section 52-440b of the General Statutes of Connecticut.*

In answer to the Appellants' constitutional challenge to Section 52-440b on the basis of its violation to their personal privacy, the Appellee asserts that the interest of the illegitimate child as well as the interest of its parents should be considered separately as well as collectively. In this regard, some background as to the illegitimate child's interest and welfare will be helpful.

The State of Connecticut, under the doctrine of parens patriae, has an interest in the welfare of the minor child. *Goshkarian's Appeal*, 110 Conn. 463, 468 (1930); see *Whalen* v. *Olmstead* 61 Conn. 263, 267 (1891); cf. *Mullins* v. *Becker*, 113 Conn. 526, 530 (1931); *McLaughlin* v. *McLaughlin*, 20 Conn. Supp. 274, 277 (1957). It has been stressed that the welfare of the minor child is paramount to all other considerations. *Goshkarian's Appeal*, supra; see *Mullins* v. *Becker*, supra; *Whalen* v. *Olmstead*, supra; *McLaughlin* v. *McLaughlin*, supra. It has always been the policy of our law to attempt in every way possible to protect minor children. *Fedor* v. *Mauwehu Council*, 21 Conn. 38, 41 (1958).

The State's interest in minor children and the State's policy in protecting minor children are such as to permit the State of Connecticut even to alter the parent and child relationship, in certain well defined situations, in so far as protecting the welfare of the minor child. For example, the Court in *Goshkarian's Appeal*, supra, at page 468 stated the following:

"... it must be borne in mind that parents have no right of property in their minor children of which they cannot be deprived without their consent. Their rights are not absolute rights; they may be forfeited by their own conduct. The relation of parent and child is a status not

> a contract, and that status may be altered or abrogated by the state as *parens patriae* in the interest of society. The welfare of the child is paramount to all other considerations, and the right of the parent to its custody and control must yield to the State when, because of the neglect of its natural guardians, the State assumes its guardianship and protection. *Whalen* v. *Olmstead*, supra; *Woodward's Appeal*, 81 Conn. 152, 166, 70 Atl. 453; *Purinton* v. *Jamrock*, 195 Mass. 187, 80 N.E. 802; *1 Schouler on Domestic Relations* (6th Ed.) Section 720."

With respect to the State's interest in minor children and the State's policy in protecting minor children, Connecticut law recognizes that the community has a vital interest in the illegitimate child and regards the illegitimate child as a ward of the State to a certain extent, at least to the extent in determining the paternity of such a child. *Domonkos* v. *Rotundo*, 4 Conn. Supp. 29, 30 (1936).

Not only does a state have an interest in the welfare of a living minor child, but it has an interest in the welfare of the yet unborn child. *Roe* v. *Wade*, supra at 162; 37 L.Ed.2d 147, 182; *Doe* v. *Bolton*, supra at 4245 (concurring opinion).

In *Roe* v. *Wade*, supra, the Supreme Court of the United States passed upon the question of whether the state has an interest in limiting the exercise of personal privacy in connection with the regulation of abortions. In that case, the Court pointed out that the state may decide at some point of time another interest, that of health of the mother or that of potential human life, becomes significantly involved in an abortion situation which may justify some state regulation over the abortion as a compelling state interest. *Roe* v. *Wade*, supra at 159; 37 L.Ed. 2d 147, 180. It is at this point that the "woman's privacy is no longer sole and any right of privacy

she possesses must be measured accordingly." Id. The Supreme Court further pointed out the following:

> "These interests (that of health of the mother and that of potential human life) are separate and distinct. Each grows in substantiality as the woman approached term and, at a point during pregnancy, each becomes 'compelling'. Id. at 162; 37 L.Ed. 2d 147, 182".

So far as the case at bar is concerned, if the privacy of a woman bears some relationship to the welfare of her illegitimate child, whose paternity has not been established, so that benefits and fundamental rights of the child may be denied or seriously impeded simply by the woman's refusal to disclose the name of the child's putative father for whatever reason she deems appropriate, then it becomes important to weigh the woman's privacy against the child's rights and welfare and measure the woman's privacy accordingly. For example, if a woman has the power to determine whether her minor child is ever to know his father and/or to determine whether the child will ever be able to establish his paternity, whether for the reason of support or otherwise, the state may very well have enough of a compelling interest justifying some regulation of woman's privacy in the interest of the community. In such a case, the woman's interest may not necessarily be the same as her child's interest and may very well be adverse to her child's interest. A woman's need and love of her child's father not only differ from her child's need and love for the father, but is certainly expressed differently and lead to different results in life.

It should be noted that in the foregoing cited authority, no distinction is made by the court as to legitimacy and illegitimacy with respect to the future welfare of the minor child. In fact, distinctions as to illegitimacy have always been on the decline since common law.

At common law, the illegitimate child was considered the child of nobody, thereby suffering severe restrictions as to the rights enjoyed by the legitimate child. 10 Am.Jur. 2d, *Bastards* Section 8 (1963). Most states have departed from the common law rule by passing statutes conferring upon the illegitimate child rights previously denied under common law, a trend of increasing liberality as to the status and rights of the illegitimate child. Id.

The State of Connecticut's interest in promoting the welfare of the illegitimate child has always been on the increase. Even from the beginning of instituting our legal system, Connecticut refused to accept the common law rule that an illegitimate child was nullius filius. *Pelak* v. *Karpa*, supra at 372. Connecticut recognized the illegitimate child as the child of his mother, with all the rights and duties of a legitimate child, including the rights of support and inheritance. Id; *Dickenson's Appeal*, 42 Conn. 491, 503 (1875). This aspect of promoting the welfare of the illegitimate child has been further demonstrated where, in accordance with the trend of increasing liberality as to the status and rights of the illegitimate child, the courts have refused to allow the illegitimate child to be deprived of certain benefits which are enjoyed by the legitimate child. These court cases have been previously noted by the lower court in the case at bar and are as follows:

> "... *Weber* v. *Ætna Cas. & Sur. Co.*, 406 U.S. 164 (1971) (workmen's compensation benefits); *Glona* v. *American Guarantee & Liab. Ins. Co.*, 391 U.S. 73 (1968) (wrongful death statute); *Levy* v. *Louisiana*, 391 U.S. 68 (1968) (wrongful death statute); *Davis* v. *Richardson*, 342 F.Supp. 588 (D.Conn.) (3-Judge District Court), *aff'd* 41 U.S. L.W. 3345 (1972) (Social Security death benefits); *Ballentine* v. *DeSylva*, 226 F.2d 623 (9th Cir. 1955) (copyright statute); *Middletown* v. *Luchenbach* S.S. Co., 70 F.2d 326 (2d Cir.), *cert. denied* 293 U.S. 577 (1934)

> (death on the high seas, 'children' includes illegitimates); *Turner* v. *Metropolitan Life Ins. Co.*, 56 Cal. App. 2d 862, 133 Pac.2d 859 (1943) ('children' in life insurance policy includes illegitimate children)." *Doe* v. *Norton*, supra. (ruling on application for a preliminary injunction), Appendix, page 19.

Courts have even gone further in permitting the illegitimate child to obtain other benefits other than those above cited. Where proven to be beneficial to the illegitimate child in a particular case, the trend in some states has been to grant greater rights to the father over the illegitimate child than previously enjoyed by the father. E.g., *Bagwell* v. *Powell*, 267 Ala. 19, 99 So.2d 195 (1957) (right of putative father to visit illegitimate child); *Hayes* v. *Strauss*, 151 Va. 136, 144 S.E. 432 (1928) (right of putative father to custody of illegitimate child where mother deceased); *Re McGrew*, 183 Cal. 177, 190 P.804 (1920) (obligation to obtain consent of the father of an illegitimate child to its adoption). It is worthy to note that some states have passed upon the question of tort liability of a parent for wrongful causing one to be born (no recovery having yet been allowed). 22 A.L.R. 3d 1441 (1968).

No list of benefits with respect to the illegitimate child is complete without reference to the question of support for such child. The right of support for the illegitimate child from his mother has always been basic to the welfare of the illegitimate child. *Pelak* v. *Karpa*, supra at 372. The primary purpose of the Connecticut paternity procedure is to ensure that the putative father provide the mother with assistance in carrying out her obligation of supporting the child. Id. Where the State of Connecticut has a financial interest in the support of the illegitimate child and the mother of the child fails to institute a paternity action, Connecticut law authorizes the State or the town to institute a paternity action in order to save the public from the burden of supporting an illegiti-

mate child. Id. at 372-73. Although not the primary purpose in a paternity action, the state's interest in saving the public from the burden of supporting an illegitimate child has been recognized as an important interest. Id. at 373. This is consistent with what was already pointed out by the Court in *Domonkos* v. *Rotundo*, supra, to wit: in Connecticut the community has a vital interest in determining the paternity of an illegitimate child.

With respect to all the benefits and rights for the illegitimate child heretofore discussed, it is thus clear that the State's interest in the determination of paternity of an illegitimate child is a vital interest in the sense of being the bridge which leads to the aforesaid benefits.

If the name of the father of the illegitimate child is not disclosed for the purposes of establishing paternity and support of such child, it is apparent that the mother of the illegitimate child, in most cases, is seriously impeded from carrying out her obligations in supporting her child. Under such circumstances, it is the welfare of the illegitimate child that is jeopardized. Such child's welfare is all the more jeopardized if the statute of limitations in paternity actions is allowed to run because the mother refuses to disclose the identity of the child's putative father.

It is apparent that the key as to obtaining most, if not all, of the above stated rights and benefits belonging to the illegitimate child is the identity of such child's father. With respect to the above stated rights and benefits that belong to the illegitimate child, it cannot be concluded that it was part of the comprehensive scheme of establishing the aforesaid rights and benefits to permit the mother of the illegitimate child to cut off or jeopardize such rights and benefits if the mother chooses not to identify the father of her illegitimate child. Section 52-440b seeks to further the state's interest in

the welfare of the illegitimate child by ensuring that the identity of the father of the illegitimate child is made known in order to keep open the bridge leading to the aforesaid rights and benefits belonging to the illegitimate child. In this connection, the State of Connecticut has an overwhelming interest, whether characterized as compelling or otherwise, in the passage and enforcement of Section 52-440b to withstand the constitutional challenge as asserted by the Appellants on the ground of an alleged violation of their personal privacy. The provisions of Section 52-440b are nothing more than a reasonable means of carrying out the state's interest in protecting the welfare of the illegitimate child. The reasonableness of the provisions of Section 52-440b becomes more evident when it is shown that the interest of the parent of the illegitimate child, as affected by Section 52-440b, fails to compare with the paramount interest in the welfare of the illegitimate child. For this, the Appellee turns to some of the evidence submitted by the Appellants in the case at bar.

By examining all of the affidavits executed by the Appellants and filed as evidence, appendix, pages 36-54, two conclusions are evident as follows:

(1) That the Appellants are primarily concerned with their own welfare and not primarily with the welfare of their children;

(2) That the Appellants, by their own conduct, have deprived and will continue to deprive their children of one or more of the aforesaid rights and benefits belonging to their children. As regards these two conclusions, the personal privacy of which the Appellants claimed to be entitled to is for the benefit of themselves more than it is for the welfare of their children. In deed, the affidavits of evidence point to the fact that the Appellants have created their own predicament and now attempt to alleviate their own plight at the

expense of one or more of the rights and benefits belonging to their children. These circumstances are but one of the many purposes of why Section 52-440b was enacted. What little harm, if any, the Appellants may suffer because of Section 52-440b is overshadowed by the loss of rights and benefits belonging to their children.

The personal privacy claimed by the Appellants amounts to nothing more than a claim that the Appellants should be shielded from the shocks, inconveniences and annoyances which members of our society in the nature of things must absorb without the right to redress. See *Davis* v. *General Finance & Thrift Corp.*, 57 S.E.2d 224, 227 (1950). If redress is needed, the Appellants are free to invoke other laws of the State, such as the criminal laws of this State. Viewed in this light, the Appellants' desire to keep secret the names of the fathers of the Appellants' children is not so fundamental and not so crucial, when compared to the paramount welfare of their children, as to require protection under the right of personal privacy. Consequently, the provisions of Section 52-440b, which seek to promote the paramount welfare of the illegitimate child, are not violative of any rights of personal privacy guaranteed under the First, Third, Fourth, Fifth, Ninth, and Fourteenth Amendments of the United States Constitution.

The Appellants have emphasized as part of their claim that the enforcement of Section 52-440b results in additional strains in the family relationships within their respective homes. They also emphasize that the enforcement of Section 52-440b may alter any existing relationship with the fathers of their children. This position gives little recognition to the mental stress, anguish and injury suffered by the illegitimate child who is denied the identity of his father. E.g. see *Does The Bastard Have A Legitimate Complaint?*, 22 University of Miami Law Review 884 (1968); *Zepeda* v. *Zepeda*, 190 N.E.2d 849, 857 (1963).

It has been pointed out that the right of personal privacy has some extension to activities relating to family relationships. But such a right as regards family relationships also has its limitations. *Prince* v. *Massachusetts*, 321 U.S. 158, 166-167. As to such limitations, the Court in *Prince* v. *Massachusetts*, supra, stated the following:

> "But the family itself is not beyond regulation in the public interest, as against a claim of religious liberty. *Reynolds* v. *United States*, 98 U.S. 145; *Davis* v. *Beason*, 133 U.S. 333. And neither rights of religion nor rights of parenthood are beyond limitation. Acting to guard the general interest in youth's well being, the state as *parens patriae* may restrict the parent's control by requiring school attendance, regulation or prohibiting the child's labor and in many other ways. Its authority is not nullified merely because the parent grounds his claim to control the child's course of conduct on religion or conscience. . . . It is sufficient to show . . . that the state has a wide range of power for limiting parental freedom and authority in things affecting the child's welfare. . . ."

Keeping in mind what was above stated by the Court in *Prince* v. *Massachusetts*, it should be recalled that in *Roe* v. *Wade*, supra, the Court restricted the right of privacy in the abortion situation by permitting the state to regulate abortions on the basis that the state has an interest in promoting the potentiality of human life after viability. In view of these two recognized restrictions to the right of privacy in the areas of abortions and family relationships as aforesaid, Section 52-440b cannot be regarded as an unreasonable limitation to the Appellants' personal privacy when all that is being asked for is the disclosure of the identity of the fathers of the Appellants' children, which serves in the best interests of such children.

The police power of the state has been recognized as a legal limitation on the right of privacy. *Walton* v. *Atlanta*, (1949, D.C. Ga.) 89 F.Supp. 309, 314, mod. (CA 5th) 180 F. 2d 143, aff'd. on reh. 181 F.2d 693; cf. *State ex rel. Marity* v. *Tyndall*, 74 N.E. 2d 914, app. dismd., 333 U.S. 834, reh. den., 333 U.S. 858. It has been held that the right of privacy is not automatically superior to the rights of the public and such a right claimed by an individual should be viewed in the light of such individual's relation to the community. *McGovern* v. *Van Riper*, 54 A.2d 469, 471 (N.J. 1947).

Because of the Appellants' past conduct, the Appellants have created a situation where the innocent illegitimate child is made a victim. Such child, nevertheless, is expected to function in the community like any other child. Because of this, the Appellants' personal privacy must be viewed in the light of the illegitimate child's functioning in the community. In terms of the needs for the illegitimate child's functioning in the community, the regulations prescribed by Section 52-440b cannot be regarded as unreasonable and should not be made to yield to the personal privacy claimed by the Appellants.

III. Section 52-440b of the General Statutes of Connecticut, Revision of 1958, Does Not Violate Due Process of Law Standards.

The object of Section 52-440b is to obtain the name of the father of the child in question by compelling the mother, if necessary, to disclose such name for the purpose of determining the paternity of the child. Such a process falls within the broad scope of the government's power to compel testimony in court, before grand juries and other governmental agencies. *Kastigar* v. *United States*, 406 U.S. 441, 443 (1972). The lower court, *Doe* v. *Norton*, supra at 75, fully delineated the rational on which the government's power to compel testimony is based. The power to compel testimony is not absolute.

Kastigar v. *United States*, supra. There are a number of exemptions from the testimonial duty. See *Blair* v. *United States*, 250 U.S. 273; 8 *Wigmore*, section 2197. The most important exemption from the testimonial duty is found in the United States Constitution, the Fifth Amendment privilege against compulsory self-incrimination. *Kastigar* v. *United States*, supra. As Section 52-440b provides immunity to satisfy the Fifth Amendment privilege and as the lower court in *Doe* v. *Norton*, supra at 76 so recognizes, the Appellants do not assert a violation of the Fifth Amendment privilege under this issue. Nor do the Appellants under this issue assert a violation of any other recognized privilege against testifying. The Appellants' claim that Section 52-440b violates the Due Process clause, in so far as the substantive law is concerned, was discussed earlier in this brief.

What the Appellants contend as a further violation of due process of law is essentially four fold as follows: one Section 52-440b creates an irrebuttable presumption; two, Section 52-440b fails to provide for an "individualized hearing" to determine whether a proper purpose is advanced by the regulation of the Appellants' situation; three, Section 52-440b fails to provide standards for the courts to use to narrow the statute's application; four, Section 52-440b is far too broad.

This contention by the Appellants was basically answered by the lower court, *Doe* v. *Norton*, supra at 74, n. 14, and need not be reiterated here. It should be emphasized that the lower court found as completely groundless the Appellants' argument that Section 52-440b imposed an irrebuttable presumption on the Appellants. The lower court further considered at length the question of an evidentiary privilege and this also need not be reiterated here. Whether Section 52-440b lacks standards or is too broad and whether the statute requires an "individualized hearing" as the Appellants suggest will be discussed next.

A. The statute is not too broad and contains sufficient standards:

Section 52-440b restricts severely whom is to disclose and to whom the disclosure will be made. If ultimately in the proceedings under Section 52-440b a judicial tribunal is called upon to exercise a judicial function, it does not matter that the proceedings were begun by an official in the exercise of an administrative capacity. See *McCarthy* v. *Clancy*, 110 Conn. 482, 495 (1930). Section 52-440b further specifies under what particular circumstances the witness is to disclose. This statute further restricts severely the subject matter, i.e., if the mother "fails or refuses to disclose the name of the putative father of such child under oath. . . ." *Section* 52-440b *of the General Statutes of Connecticut, Revision of* 1958. This latter point would leave to the Connecticut Circuit Court to make inquiry into the following: who is demanding disclosure and under what circumstances; whether there was a refusal to be sworn or to disclose; whether the refusal was justified in law; whether the question the witness refused to answer was a proper question; whether the "proper question" was reasonably related to the subject of inquiry. See generally, *McCarthy* v. *Clancy*, supra at 496. After determining these matters, the Connecticut Circuit Court has the obligation to hear the witness and consider any defense the witness might offer. See *McCarthy* v. *Clancy*, supra.

In connection with the court's obligation to hear the witness and consider any defense the witness might offer, due process of law also protects against the use of excessive means to obtain any evidence. *United States* v. *Doe*, 405 F.2d 436, 438 (2d Cir., 1968) (contempt proceedings). This would also destroy the Appellants' argument that Section 52-440b also violates the Fourth Amendment of the United States Constitution in that Section 52-440b is an intrusion into a private area without prior due process, for the purpose of seizing evidence for litigation. Also, due process of law further requires the court under Section 52-440b to allow the witness the opportunity to present evidence showing why he should not be held in contempt. See *Vlandis v. Kline*, 412 U.S. 441, 37 L.Ed.2d 63, 71 (1973).

Section 52-440b further provides a legal process, to wit: the mother may be "cited to appear before any judge of the circuit court and compelled to disclose the name of the putative father under oath. . . ." The word "cite" has been defined as follows:

> "To summon; to command the presence of a person; to notify a person of legal proceedings against him and require his appearance thereto." *Black's Law Dictionary*, 310 (4th ed. 1951).

With regard to a fair opportunity for the witness to protect his rights and also to protect the rights of the public in the discovery, it is apparent that to summon by citation satisfies the standards of due process as to the legal means for notifying the witness under Section 52-440b of the nature of the proceedings to which he is entitled, so long as it also provides reasonable information as to the purpose of the inquiry. *McCarthy* v. *Clancy*, supra at 502.

In Connecticut, punishment for contempt committed in the presence of the court is statutorily regulated. *Section* 51-33 *of the General Statutes of Connecticut, Revision of* 1958. Where process is required to bring the offender of the contempt proceedings into court, the contempt is ascertained and punished according to common law. *Huntington* v. *McMahon*, 48 Conn. 174, 196 (1880). As Section 52-440b provides that a mother *may* be cited to appear in court for her refusal to disclose, it is apparent that the common law standards regulating contempt would also apply to a contempt arising out of Section 52-440b.

In Connecticut, a judgment of contempt is a final order which may be reviewable by the State Supreme Court. *Stoner* v. *Stoner*, 163 Conn. 345, 359 (1972); *State* v. *Jackson*, 147 Conn. 167, 170 (1960). Such a review by the State Supreme Court embraces the questions of jurisdiction "such as whether the court had authority to impose the punishment inflicted and whether the act or acts for which the penalty was imposed could constitute a contempt." *Goodhart* v. *State*, 84 Conn. 60, 63 (1911); *State* v. *Jackson*, supra at 170.

When mothers under Section 52-440b have appeared in court and have been heard in accordance with the statutory standards, the common law standards, and the due process standards and been found to have failed in their duty under Section 52-440b, their fines or their commitment to jail are not in violation of due process of law guaranteed by the Federal and State Constitutions.

In addition to the above noted standards, the language used in Section 52-440b allows the Connecticut Circuit Court to exercise its sound judicial discretion as to whether in a particular case non-disclosure warrants a finding of contempt or the imposition of a penalty. *Doe* v. *Norton*, supra at 74, n. 14.

The Appellants further urge that commitment under Section 52-440b raises a question as to due process of law. When a similar argument was made to the Connecticut Supreme Court, the Connecticut Supreme Court stated the following:

> "Punishment for contempt by a court, or other tribunal duly authorized, is 'due process of law' within the meaning of the constitution. The right and duty of the state to protect its jurisdiction and dignity by punishing for contempt, in proper cases, through its officers, is the sacred right of self-defense." *In re Clayton*, 59 Conn. 510, 520 (1890).

From what was stated by the court *In re Clayton*, supra, as above quoted, in no stretch of the imagination can a commitment under Section 52-440b within the proper safeguards constitute, as the Appellants suggest, cruel and unusual punishment in violation of the Eighth Amendment to the Constitution of the United States.

B. *"Individualized Hearing":*

When the Appellants claim that due process requires an "individualized hearing" as to disclosing the name of the putative father under Section 52-440b, it is not known whether such characterization by the Appellants refer to a trial on the merits. As regards contempt proceedings under Section 52-440b, it should be pointed out that the Appellants are not on trial for their conduct. Nor are they in jeopardy and exposed to any detriment provided they answer the "proper question". The Appellants are witnesses for the purpose of disclosing the names of the putative fathers of the children in question. In a criminal contempt, the proceedings are criminal in nature but do not constitute a criminal prosecution. *State* v. *Jackson*, supra at 169. Similarly, it is submitted that a civil contempt cannot be held tantamount to a civil prosecution which requires a trial on the merits for the parties. Whether under Section 52-440b contempt proceedings are classified as criminal or civil in nature, a hearing on the scale of a trial is not necessarily required by due process of law.

It is recognized that the Due Process Clause does not require a hearing 'in every conceivable case of government impairment of private interest'. *Stanley* v. *Illinois*, 405 U.S. 645, 650 (1971). The Court in *Cafeteria Workers* v. *McElroy*, 367 U.S. 886, at 895 (1961) stated the following:

> "The very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation. . . .

> . . . what procedures due process may require under any given set of circumstances must begin with a determination of the precise nature of the government function involved as well as of the private interest that has been affected by the governmental action."

The hearing that is provided under Section 52-440b as regards any contempt proceedings is a well-designed hearing procedure in that on one hand it takes into consideration the interest of the State, as well as the interest of private citizens, while on the other hand it takes into consideration the interest of the mothers, such as the Appellants. In such a process, none of the due process standards are excluded or absent as heretofore argued.

The Appellants further urge that Connecticut fails to provide for the appointment of counsel to mothers facing citations under Section 52-440b. It is submitted that the statute and the court exercising its function under the statute do not preclude such mothers from having counsel. Nor is it true as the Appellants suggest that the Connecticut Circuit Court lacks power to appoint counsel for indigent mothers merely because *Section 54-81a of the General Statutes of Connecticut, Revision of* 1958, applies to criminal matters.

The Appellants make the claim that the First Amendment of the United States Constitution incorporates a right to prevent divulgences of some types of private information. They assert that the right to associate freely implies some right to prevent the public disclosure of that association where such disclosure might impair the right.

The First Amendment by way of the Fourteenth Amendment does not prohibit, but rather limits the power of the States to interfere with freedom of speech, with freedom of inquiry, and with freedom of association. Inquiry by the government must be related to and further a legitimate governmental task. *Watkins* v. *United States*, 354 U.S. 178, 187. In addition, the scope of the inquiry must not be unlimited. *Shelton* v. *Tucker*, 364 U.S. 479, 488. As heretofore pointed out, the inquiry made under Section 52-440b is related to and does further a legitimate governmental interest under the guidance of statutory, common law, and due process standards.

With regard to the right of inquiry as related to the right of association, the Supreme Court of the United States demands that the State demonstrate an interest in obtaining the disclosure it seeks from a person that is sufficient to justify any deterrent effect that the disclosure may have on such person's exercise of his constitutionally protected right of association *N.A.A.C.P.* v. *Alabama*, 357 U.S. 449, 463. The interest of the state in obtaining the disclosure must be so cogent as to justify the substantial abridgment of associational freedom which such disclosure will effect. *Bates* v. *Little Rock*, 361 U.S. 516, 524. If the inquiry is a significant encroachment upon personal liberty, a showing of subordinating interest which is compelling must be made by the State. Id. As previously argued by the Appellee, a desire on the part of any of Appellants to keep secret the name of her child's father is not so fundamental or implicit in the concept of ordered liberty as to require constitutional protection. Nor is there under Section 52-440b any encroachment by the state upon any personal liberty of any Appellant. Even if any Appellant's desire for secrecy is fundamental or even if there is some encroachment upon any Appellant's personal liberty, the State of Connecticut's interest in seeking the disclosure under Section 52-440b is overwhelming as to the following: the support and welfare of the child; the support and welfare of the child's mother; the welfare of the community in relation to the child and its mother; in the reimbursement of welfare assistance. Such interest is compelling enough to withstand any of the constitutional objections to Section 52-440b raised by the Appellants, including any objection under the First Amendment.

The Appellants further claim that the First Amendment right to petition for redress of grievances includes the right to have access to courts and as such implies a corresponding right not to resort to Courts. In relation to this claim, the Appellants assert that Section 52-440b forces the Appellants to institute and prosecute paternity actions.

It is to be noted that the instituting and prosecuting of paternity actions arising out of Section 52-440b is not compulsory. As may be recalled, the lower Court noted that Section 52-440b contains language which permits the Connecticut Circuit Courts to exercise sound judicial discretion in administering Section 52-440b. This includes compelling the institution of any paternity action by a mother who fails or refuses to bring a paternity action within the terms of Section 52-440b. Thus, the mandatory or compulsory problem, as presented in relation to the school resolution adopted by the Board of Education in *Board of Education* v. *Barnette*, 319 U.S. 624, is not present in the case at bar.

In view of the fact that the Connecticut Circuit Court may exercise sound judicial discretion under Section 52-440b, we must not be so naive as to believe that after proper inquiry a Connecticut Circuit Court under Section 52-440b would, in the practical sense, compel a mother to institute and prosecute a paternity action if the mother is adamant in and committed to her belief against bringing a paternity action. Her reluctant conduct in bringing a paternity action may have a bearing as to the evidence placed before a jury. In the exercise of sound judicial discretion under such circumstances, it is apparent that it would be more practical for the Connecticut Circuit Court to recommend after disclosure is made that the institution and prosecution of the paternity action be made by the State or town pursuant to *Section 52-440a of the General Statutes of Connecticut, Revision of* 1958, wherein the mother merely may be compelled to act as a witness. The provision of

Section 52-440b which provides that the court may compel a mother to institute a paternity action must be construed as merely an affirmation by the Connecticut legislature to have the child's interest protected and to have the State's or town's claim for reimbursement of welfare assistance subrogated to the mother's right of claim against the putative father.

We also must not forget that there are mothers who may appear before the Court under Section 52-440b because they are undecided for a variety of reasons as to whether initiating paternity actions is the right thing to do. In the exercise of sound judicial discretion, the Connecticut Circuit Court might conclude that it would be in the best interest of the child, or in the best interest of all, if a paternity action was instituted and may convince such mothers to voluntarily institute the paternity actions. If the Connecticut Circuit Court concludes that it is not in the best interest of the child to have a paternity action instituted, the contempt provisions of Section 52-440b are not mandatory upon the court.

It should be also pointed out that the power to hold mothers in contempt under Section 52-440b for their failure or refusal to institute paternity actions is not compulsory. However, suppose that a Connecticut Circuit Court does hold a particular mother in contempt under Section 52-440b for her refusal to institute a paternity action. Without more, are we to assume that the Court is automatically without a basis or valid purpose in finding the mother in contempt? Are not the acts upon which the contempt is founded reviewable by a higher state tribunal? Are not the contempt proceedings subject to the standards of due process?

In considering the foregoing, Section 52-440b does not provide a mandatory procedure for contempt. Nor does Section 52-440b provide a process whereby it is mandatory upon mothers to take affirmative action to institute paternity ac-

tions in contravention of any First Amendment right. Whatever is required of mothers under Section 52-440b does not force them to adopt beliefs or attitudes not of their own choosing. What Section 52-440b does require is that mothers perform a duty that is useful and necessary to the community.

IV. Section 52-440b Does Not Violate the Equal Protection Clause of the Fourteenth Amendment.

A. *The standard to which the Connecticut Statute must adhere:*

Elementary to any discussion of whether a challenged statute violates a person's right to equal protection of the United States Constitution must be a determination of precisely what standard it is that the statute may be said to violate. As has been generally accepted, state statutes are entitled to a presumption of validity and will be closey scrutinized only where there is a claim that fundamental constitutional rights have been violated or where it appears that they are based upon a suspect classification such as race or wealth. *San Antonio Independent School District* v. *Rodriguez* 411 U.S. 1 (1973); *McDonald et al* v. *Board of Election Commissioners of Chicago* 394 U.S. 802 (1968). If no suspect classification or fundamental right is involved the traditional equal protection standard holds that a statute may be declared unconstitutional as violating Equal Protection only if it bears no rational relationship to a legitimate state purpose. *Frontiero* v. *Richardson* 411 U.S. 677 (1973); *McGowan* v. *Maryland* 366 U.S. 420 (1961).

Recently, a third, intermediate standard has been urged as an addition to the traditional two-tiered standard. Particularly in the Second Circuit this standard, described as "a more graduated sliding-scale test" has gained some adherents. In this regard see *Aguayo* v. *Richardson* 473 F.2d 1090 (U.S.C. of Apps. 2nd Cir., 1973) and *City of New York* v. *Richardson* 473 F.2d, 923 (U.S.C. of Apps. 2nd Cir., 1973). However, even in this Circuit the supposed new standard has been openly questioned. As the Court put it in *Henry* v. *White* 359 F.Sup. 969, 971 (D. Conn., 1973):

> "Within the Second Circuit recent cases have suggested that the appropriate standard is somewhat higher than the traditional relationship test . . . While some Supreme Court decisions offer hints in this direction in some contexts, more recent cases suggest that the rational relationship test is alive and well, *San Antonio Independent School District* v. *Rodriguez*, supra; *McGinnis* v. *Royster*, v. *Royster*, 410 U.S. 263 (1973)."

In *Boraas* v. *Belle Terre*, 476 F.2d 806 (2d. Cir. 1973) the Circuit Court clearly set up a new standard to fall between the two traditional standards. However, this decision was reversed by the Supreme Court in *Boraas* v. *Belle Terre* 42 U.S.L.W. 4475 (April 11, 1974). Rather than using a "sliding-scale standard" under which the more valuable the nature of the right affected, the more intense the judicial scrutiny required and the more rational must be the means to achieve the objective; the Supreme Court appears to have hewn close to the traditional rational relationship standard in overturning the Circuit Court decision in *Borras*.

It is submitted that Section 52-440b of the Connecticut General Statutes in any event is both rationally related to a valid public purpose *and* necessary to the achievement of a compelling state interest and therefore capable of passing the strictest judicial scrutiny (although this is not essential) as neither a suspect classification nor a fundamental right is involved in this case. The statute is thus able to pass either the traditional rational relationship test or meet a stricter new standard.

The objections to Section 52-440b voiced by the Appellants could in truth better be urged at a session of the Connecticut Legislature than in front of this Court. See *Dandridge* v. *Williams* 397 U.S. 471, 503 (1970) where the Court stated:

> "We do not decide today that the Maryland regulation is wise, that it best fulfills the relevant social and economic objectives that Maryland might ideally espouse, or that a more just and humane system could not be devised. Conflicting claims of morality and intelligence are raised by opponents and proponents of almost every measure, certainly including the one before us. But the intractable economic, social, and even philosophical problems presented by public welfare assistance programs are not the business of this Court. The Constitution may impose certain procedural safeguards upon systems of welfare administration. *Goldberg* v. *Kelly* 397 U.S. 254 (1970). But the Constitution does not empower this Court to second-guess state officials charged with the difficult responsibility of allocating limited public welfare funds among the myriad of potential recipients."

Appellants' arguments are basically policy arguments and should be heard in a legislative, not judicial, forum; there has been no denial of equal protection shown here.

B. *No Fundamental Constitutionally-Protected Rights have been Violated by Section* 52-440b

The Appellants' claim that the law in question violates their fundamental right to privacy is further discussed in the section of this brief dealing with the constitutional right to privacy. However, it appears that some comment upon this claim is relevant here. As the Court stated in *Roe* v. *Wade* 35 L.Ed. 2d 147, 180 (1973):

> "The pregnant woman cannot be isolated in her privacy. She carries an embryo and, later, a fetus. . . . The situation is therefore inherently different from marital intimacy, or bedroom possession of obscene material, or marriage, or procreation, or education, with which Eisenstadt, Griswold, Stanley, Loving, Skinner, Pierce, and Meyer were respectively concerned. . . . The woman's privacy is no longer sole and any right of privacy she possesses must be measured accordingly."

The mother of an illegitimate child similarly "cannot be isolated in her privacy." She is either a married woman some of whose children have been illegitimated by a dissolution of marriage or other judicial proceeding in which these children have been found "not to be issue of the marriage" which finding is a matter of public record or she is a single woman obviously pregnant with an illegitimate child. Thus, the fact of the child's illegitimacy must certainly be known among a number of the mother's associates and friends. Even if, as has been urged, we accept the fact that a number of unwed mothers go elsewhere to bear their children, their arrival back in town with an infant in tow is doubtless all the advertisement needed to brand the child as illegitimate. And, further, in the case of those families on AFDC the mother has informed the Welfare Department of the child's illegitimacy. Thus, without any action under Section 52-440b at all the privacy of the mother of an illegitimate child has already been invaded. Because of the simple but obvious situation resulting from her own actions, she has already been subjected to embarrassment and her child stigmatized as illegitimate. About the only aspect of this condition which does not naturally become common knowledge is the identity of the child's father.

As the damage to the mother's and the child's reputation has already been done there can be little more violation of privacy involved in requiring the mother to name the child's father; and surely whatever invasion does result from such a

requirement cannot be said to outweigh the benefits, both financial and psychological which flow to the child as a result of the establishment of his paternity and the financial and social benefits to the public in the case of an illegitimate child on welfare.

Furthermore, to say, as this Court did in *Roe* v. *Wade*, supra at 197-177 that the right to privacy "has some extension to activities relating to" marriage, procreation, contraception, family relationships, and child rearing and education does not mean and cannot fairly be construed to mean, as the Appellants in this case would have us believe, that every activity which could conceivably be related to any of the aforementioned areas is automatically entitled to be included in that zone of privacy protected under the Constitution. The type of rights that may be considered so "fundamental" as to be guaranteed under the Constitution has been pointed out in a number of cases.

The right to determine what individual shall be one's marriage partner is protected and may not be restricted because of race. *Loving* v. *Virginia* 388 U.S. 1, 12 (1967). Also the right to determine whether one will or will not bear children through the use of birth control has been protected in *Griswold v. Connecticut*, supra. On the other hand the right to determine whether one will or will not bear children through the use of abortion has been held to be not an absolute constitutional right and the States may impose certain restrictions upon it such as requiring that the woman's physician "in his best clinical judgment recommend it as necessary", or, after the first trimester of pregnancy, requiring that an abortion be done in a properly equipped facility by a licensed operative; finally, in the last trimester the state may entirely prohibit an abortion. *Doe* v. *Bolton* 410 U.S. 179 (1973); *Roe* v. *Wade*, supra at 179. Mention of this point is made to show that even in the most private of the

constitutionally protected zones of privacy the Court has not held that state regulation has absolutely no place. For example probably very few people would attempt to read the Court's opinion in *Loving* v. *Virginia*, supra, as automatically rendering unconstitutional all state statutes against incestuous marriages, yet such laws do limit the freedom an individual has in determining whom he will marry.

This Court has long been engaged in a process of weighing and balancing the interests which the state is trying to protect against those of the individual claiming a right to privacy; often a compromise between these two competing interests has been struck as in *Roe* v. *Wade*, supra. Even where fundamental rights are concerned the state has been permitted to regulate when this is necessary for the individual's own good — as regulations involving the mother's health in the second trimester of pregnancy where an abortion is involved — or where the opposing rights of another individual may be involved — for example, those of the fetus where the mother desires an abortion in the last trimester of pregnancy. Along these lines see also *Prince* v. *Massachusetts*, supra and *Sherbert* v. *Verner*, 374 U.S. 398 (1963).

Finally, even if the right of privacy advanced by Appellants here could conceivably be considered fundamental, it is submitted that the interests represented by the state in this case — those of the illegitimate child to support by his father and those of the public in promoting and protecting the relationship and duties of parent and child as well as to reimbursement from legally liable relatives for monies expended to support the child are sufficiently compelling to justify state intervention in this instance. If an unborn fetus at any time can be said to have a right which is so compelling as to outweigh its mother's fundamental right to determine whether she will or will not bear a child, *Roe* v. *Wade*, supra, then it must be admitted that the right of a child who has already

been born to support from its parent can hardly be considered to be less compelling. And this right becomes even more important when it is recalled that there is a three year statute of limitations for paternity actions in Connecticut, Connecticut General Statutes Section 52-435a, and beyond this point the child cannot sue his father for support if his mother has not done so for him.

Nor is the mother's fundamental Fifth Amendment right not to incriminate herself an issue here. The Connecticut legislature has by statute provided immunity from criminal prosecution to both the mother and the putative father of an illegitimate child for any criminal act about which either gives testimony during paternity proceedings or for any statement made prior to those proceedings which relates to the issue of paternity. Connecticut General Statutes Section 52-435(b) as amended by Public Act 432 Section 2 (1971) and Connecticut General Statutes Section 52-435c as amended by Public Act 439 Section 1 (1971).

The government's power to compel testimony from unwilling persons even though that testimony may be embarrassing or tend to disparage their character has been clearly established. The public has a right to every one's evidence and the citizen has the duty to testify. *Kastigar* v. *United States*, supra; *Branzburg v. Hayes*, 408 U.S. 665 (1972). Even the marital privilege not to testify against one's spouse (and such a privilege can hardly be claimed in the case of mere paramours) has been held to be merely a legislatively-created privilege and not a right which is "fundamental" in the sense that it is among the rights and liberties protected by the Constitution. *Branzberg* v. *Hayes*, supra; *Wyatt* v. *United States* 362 U.S. 525 (1960).

C . *The Classification Created by Section 52-440b is Rational, Valid and Does Not Create Invidious Discrimination.*

In *Rinaldi* v. *Yeager* 384 U.S. 305 (1966) the Court discussed the Equal Protection requirements governing legislative line-drawing at page 309:

> "The Equal Protection Clause requires more of a state than non-discriminatory application within the class it establishes. *McLaughlin* v. *Florida* 379 U.S. 184, 189-190. It also imposes a requirement of some rationality in the nature of the class singled out. To be sure, the constitutional demand is not a demand that a statute necessarily apply equally to all persons. 'The Constitution does not require things which are different in fact . . . to be treated in law as though they were the same.' *Tigner* v. *Texas* 310 U.S. 141,147 (1940). Hence, legislation may impose special burdens upon defined classes in order to achieve permissible ends. But the Equal Protection Clause does require that, in defining a class subject to legislation, the distinctions that are drawn have 'some relevance to the purpose for which the classification is made.' "

1. The Statute does not invidiously discriminate against illegitimates.

Since colonial times it has been the policy of Connecticut to require a father to support his illegitimate child. This policy is part of a general statutory scheme of this state requiring that "when a person is unable to support himself and has a husband or wife, father or mother, or children who are able to provide such support, it shall be provided by them." *State* v. *Wolfe*, supra at 202. In this regard see Connecticut General Statutes Sections 17-320, 52-442, and 52-442a. Should any of the class of persons entitled to support be the recipient of public assistance the State of Connecticut may

institute legal procedures against that person's legally liable relatives to obtain an order for payment of support to the state; in this manner at least a portion of the public funds expended may be recouped. Connecticut General Statutes Section 17-324. The statute under attack here fits into this general scheme by attempting to provide the information and testimony necessary to establish paternity (the father's identity) so that a paternity action can be maintained and, if that suit is successful, a support order made. However, Connecticut has long been concerned with more than the mere paternal support of an illegitimate child and early rejected the Common Law doctrine of nullius filius. *Dickinson's Appeal*, supra.

A growing concern for the status of the illegitimate child and an increasing interest in placing him on an equal footing with legitimates can be discerned in several recent Supreme Court decisions. *Levy* v. *Louisiana*, supra, declared unconstitutional a state statute which did not permit illegitimate children who had been dependent upon their mother to bring an action for her wrongful death. Similarly, in *Glona* v. *American Guarantee and Liability Insurance Co.*, supra, the Court struck down the Louisiana statute which prevented a mother from recovering for the wrongful death of her illegitimate son. Again in *Weber* v. *Ætna Casualty and Surety Co.*, supra, the Court held unconstitutional a Louisiana law which placed unacknowledged illegitimate children in an inferior position in claiming Workmen's Compensation after their father on whom they had been dependent was killed. As the Court stated in *Weber* at page 172, "Though the latitude given state economic and social regulation is necessarily broad, when state statutory classifications approach sensitive and fundamental personal rights, this Court exercises a stricter scrutiny. . . ."

In *New Jersey Welfare Rights Organization* v. *Cahill*, 36 L.Ed.2d 543 (1973) the Court declared ". . . there can be no

doubt that the benefits extended under the challenged program [Assistance to familiies of the Working Poor Program] are as *indispensable* to the health and well-being of illegitimate children as to those who are legitimate." And again in *Gomez* v. *Perez*, 409 U.S. 535, 537-8 (1973) this court stated:

> "We therefore hold that once a State posits a judicially enforceable right on behalf of children to needed support from their natural fathers there is no constitutionally sufficient justification for denying such an essential right to a child simply because its natural father has not married its mother."

Thus while the Court has not specifically declared illegitimacy an inherently suspect classification requiring strict scrutiny it has clearly held recently that a classification of illegitimates which operates to their disadvantage can be justified only by showing that the state interest so furthered is substantial. However, the statute currently at issue operates not to the disadvantage but to the advantage of illegitimates by assisting in establishing their paternity and establishing for them the right to paternal support — advantages of which their mothers would deprive them. As Judge Blumenfeld declared in his opinion below at Appendix, p. 147: "Indeed if the legislature were to enact a law protecting the 'right' of unwed mothers to exclude their children from the benefit of parental support, it would be struck down."

In any case as the Court stated in *Labine* v. *Vincent*, 401 U.S. 532, 536 (1971) in upholding the Louisiana intestate succession scheme which placed illegitimate children in an inferior position to legitimate children and other relatives: "*Levy* did not say and cannot fairly be read to say that a State can never treat an illegitimate child differently from legitimate offspring." and further on in *Labine* at pp. 293-294:

"These rules for intestate succession may or may not reflect the intent of particular parents. Many will think that it is unfortunate that the rules are so rigid. Others will think differently. But the choices reflected by the intestate succession statute are choices which it is within the power of the State to make. The Federal Constitution does not give this court the power to overturn the State's choice under the guise of constitutional interpretation because the Justices of this Court believe that they can provide better rules. . . . But the power to make rules to establish, protect and strengthen family life as well as to regulate the disposition of property left in Louisiana by a man dying there is committed by the Constitution of the United States and the people of Louisiana to the legislature of that state. Absent a specific guarantee, it is for that legislature, not the life-tenured judges of this Court, to select from among possible laws."

The situation is essentially the same in the present case as in *Labine*. Here the Connecticut legislature has made a determination that it is in the best interest of illegitimate children and of the public to promote and protect the relationship and duties of parent and child as well as to be reimbursed by legally liable relatives for welfare money spent to support the child. If the appellants disagree with the judgment of the Connecticut legislature in these matters that is the forum to which they should turn for reform. The children's attorneys in their brief state at p. 26, without any substantiating data: "Most children are more likely to be harmed than helped by enforcement of the statute against their mothers." However, this is not the view of the Connecticut legislature; nor is this, apparently, the view of the vast majority of mothers of unwed children. (See Deposition of Joseph Mancini, Appendix at pp. 116, 110 and 108 where Mr. Mancini, Welfare Investigator, State of Connecticut, indicated that out of 150 to 200 cases per month over a period

of several months only six mothers were cited to court for refusing to name the putative fathers of their illegitimate children.)

Maintaining a mother-child relationship free of stress, again is not a constitutionally protected right; it truly appears that Appellants should bring whatever psychiatric information they have to show that it is harmful to an illegitimate child to establish his paternity and obtain paternal support for him to the legislature, not the Courts.

Finally, naming the putative father is not a condition of eligibility for AFDC for either child or mother. The only sanctions imposed are those against the mother for failure to testify and she can purge herself of contempt and return to her children at any time by naming the putative father.

As has been pointed out the classification of illegitimates upon which this statute is based does not invidiously discriminate against such children and, therefore, does not require strict judicial scrutiny of the classification.

2. The statute does not violate the Fourteenth Amendment because of a "suspect classification" based upon sex.

While the Supreme Court has certainly viewed classifications based upon sex with dislike, it appears that the majority has not yet placed sex upon the list of those suspect classifications which automatically require strict scrutiny. See *Frontiero* v. *Richardson*, 411 U.S. 677 (1973) Consequently, the appropriate test would appear to be the "rational relationship" standard as applied in *Reed* v. *Reed*, 404 U.S. 71, 75-76 (1971):

". . . this Court has consistently recognized that the Fourteenth Amendment does not deny to states the power to treat different classes of persons in different ways. . . .

> The Equal Protection Clause of that Amendment does, however, deny to states the power to legislate that different treatment be accorded to persons placed by a statute into different classes on the basis of criteria wholly unrelated to the objective of that statute. A classification "must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike." *Royster Guano Co.* v. *Virginia*, 253 U.S. 412, 415 (1920)"

This same standard has recently been reiterated by the Court in the case of *Johnson* v. *Robison*, 42 U.S.L.W. 4313, 4317 (March 4, 1974).

In any case, the Connecticut Legislature has attempted specifically to draw its statutes including those dealing with paternity actions in such a manner that they will not discriminate on the basis of sex. See Connecticut General Assembly - House Proceedings, 1971, Vol. 14, pt. 8, May 21, 1971, p. 3521-3522.

> "John A. Carrozzella, 81st Dist.: Mr. Speaker, what this does is amends the paternity act to provide a mother, or first of all, they treated the father with immunity for any statements made prior to proceedings or during the proceedings. It gives the same immunity to the mother. Under present law she only has immunity while testifying, now she will have the immunity for statements made prior to the proceedings, too. In addition, it provides that the written sworn affirmation of maternity must be executed by the mother as well as the father when acknowledgment of paternity is filed in the Circuit Court so as to have the effect of a judgment."

Regardless of any pronouncements which may be made by this Court or even a Constitutional Amendment regarding

the equality of the sexes, one fact remains absolutely unchangeable — men do not bear children. Under Connecticut General Statute Section 7-50 the name of the putative father of an illegitimate child may not even be entered on the birth records of the child without the written consent of the putative father. Thus, the name of a putative father is information possessed only by the mother of an illegitimate child and until that specific piece of information is available no paternity action can even be commenced against a putative father which would permit the subpoenaeing of the mother to give testimony regarding him in order to establish paternity; one cannot commence a suit against an unknown person. Consequently, Section 52-440b provides for this situation by permitting the state, town or guardian ad litem to obtain the vital piece of information which is needed in order to bring a paternity suit, establish the child's parentage, and obtain paternal support for him — the name of the putative father.

On the other hand, the names of the mother of an illegitimate child and of the parents of a legitimate child are virtually always known or available through the registrar of vital statistics or other public records including those of other states. (The state department of health requires each birth certificate to contain the name of the child's mother and, if she is married to the child's father, his name.) Connecticut General Statutes Sections 7-48 and 7-56. Thus in the case of other parents than putative fathers at least their names can fairly easily be established so that an investigation may be conducted to determine their whereabouts and an action for support commenced against them. In addition no further action is required against them as it is against putative fathers to establish liability. However, in the case of putative fathers whom the mothers refuse to name the state, town or guardian is left without even a starting point for an investigation.

As has been discussed previously, it is the policy of the State of Connecticut to require parents to support their minor children and, if the children are on public assistance, for the state to pursue legally liable relatives and obtain orders against them for the support of their minor children. Should any witness in such an action refuse to testify or to answer any proper question he can be found in contempt and committed by the court as has long been permitted generally in judicial proceedings. *McCarthy* v. *Clancy*, supra at 497, and cases there cited. Further, after a support order has entered, any legally liable relative who fails to meet such an order may be found in contempt and imprisoned. Connecticut General Statutes Section 17-324, See also Connecticut General Statutes Section 53-304.

It is further argued by Appellants that the State cannot compel the mother of an illegitimate child to start paternity proceedings as it does not force any other class to take such action. Again the uniqueness of the situation must be remembered. The mother is virtually the only person knowing the name of the father or possessing the information to establish that he is indeed the father.

While Section 52-440a does permit the state or the town if either is "interested in the support of a child born out-of-wedlock" to institute a paternity proceeding if the mother fails to do so and may subpoena the mother to testify, no such provision is made in the case of children not receiving public assistance. Thus, the child's only recourse to establish his paternity through a guardian or guardian ad litem is to request the court to compel his mother to undertake paternity proceedings or be held in contempt under Section 52-440b. Again the court is granted discretion and one may assume that it would only require the mother to institute suit if the circumstances warranted it and would probably do so only in a case where no one else was empowered to start paternity proceedings. To date it does not appear that any Circuit Court

judge has compelled any woman to institute paternity proceedings or held her in contempt for failure to do so.

Thus it is clear that Connecticut provides for equal enforcement of its policy of requiring both parents to support a child as to all parents. Section 52-440b is part of this scheme of enforcement and applies to mothers of illegitimates alone because only they have the information which is necessary to commence any type of paternity proceedings. As to other parents information concerning their identity is at least available.

Quite simply, Section 52-440b exists because that is the only way possible in some cases to obtain the information and testimony necessary to establish the paternity of and support for illegitimate children — the establishment of which matters the Connecticut Legislature has determined to be in the best interest both of the illegitimate children involved and the general public. To complain because others are not subject to Section 52-440b is to complain because apples are not oranges; in other cases the information sought here is easily available. The Legislature has provided a narrowly drawn statute to apply to a unique situation — a statute which is admirably suited to obtaining information and testimony essential to the successful pursuit of compelling state interest — establishing the paternity of illegitimates, obtaining paternal support for them and recouping money expended for their support from public funds — and which creates a reasonable classification — mothers of illegitimates who are the only persons possessed of the required information regarding the identity of putative fathers. Such information, as has been indicated, is already available regarding other parents and thus resort to such a procedure for the simple purpose of gaining information in their cases is unnecessary because in their case no further action such as a paternity proceeding, is necessary to establish their liability.

3. The Statute does not create a suspect classification on the basis of poverty.

It must be admitted by all concerned that the position that the establishment of paternity and the subsequent entitlement to support along with the other benefits which result is harmful to an illegitimate child is surely a novel doctrine. However, on the basis of a deposition by one psychiatrist and an affidavit by one psychologist the Appellants have set themselves up as experts in the field and have determined to set about to overthrow the common experience of centuries, of the Connecticut legislature, and of most mothers of illegitimate children (see Appendix, Deposition of Joseph Mancini, pp. 112-116) that the establishment of paternity and of paternal support is in the child's best interests. In fact, the Supreme Court seems to subscribe to the view that establishing the right to financial support is crucial to the best interests of the illegitimate child. *New Jersey Welfare Rights Organization* v. *Cahill*, supra; *Weber* v. *Aetna Casualty and Surety Co.*, supra; *Levy* v. *Louisiana*, supra; *Glona* v. *American Guarantee and Liability Insurance Co.*, supra.

The statute itself reflects this view that it is in the best interests of the child and of the public to establish paternity and support by permitting compelled disclosure of the name of the putative father from both the unwed mother of an illegitimate child and from the mother of any child born to a married woman during marriage which child is later found not to be the issue of the marriage "to the welfare commissioner, if such child is a recipient of public assistance, or to a selectman of a town in which such child is a recipient of general assistance, or otherwise to a guardian or a guardian ad litem of such child." Thus there is a duty of disclosure placed upon both mothers of illegitimate children who receive welfare and those who do not. Consequently there is no discrimination against those who are poor.

Appellants argue that a guardian or guardian ad litem is likely to agree with their feeling that establishing paternity is harmful to an illegitimate child and that they may not therefore force disclosure of the putative father's name and that because of this the statute is less likely to be enforced against mothers of illegitimates who are not on welfare than against those who do receive public assistance. However, the fact that guardians may be less diligent in pursuing the establishment of paternity and support than the Welfare Commissioner is not sufficient to invalidate the statute. And in this regard it must be remembered that such an idea is merely unsupported speculation on the part of the Appellants. For, as was stated by the Court in *Buck* v. *Bell*, supra at 208; "The law does all that is needed when it does all that it can; indicates a policy, applies it to all within the law and seeks to bring within the lines all similarly situated so far and so fast as its means will allow."

Finally, as was pointed out by Judge Blumenfeld in his opinion below (see Appendix p. 139) and as has been recognized by the Judges of the Connecticut Circuit Court (see the transcripts of various cases filed with the several briefs: Appendix of Brief Amici Curiae, pp. 16a-17a and 24a-25a; *Norton* v. *Larracuente*, No. CV2-738-94960 Second Circuit Court Nov. 23, 1973 [case X of Appellant's Appendix]) the statute grants the Judges discretion as to whether to hold in contempt the mother who refuses to disclose the putative father's name. (See the wording of Section 440b which provides that the mother "*may* be found to be in contempt of said court and *may* be fined not more than two hundred dollars or imprisoned not more than one year or both.")

There is thus, no class limited to the poor or to "mothers of illegitimate children who receive welfare" created by the statute which, rather, deals with mothers of all illegitimate children. Finally, even if there were such a class created by

this statute that class is directly related to the public interest the statute is intended to assure as will be discussed below.

4. Valid, Articulated State Interests are Rationally Advanced by Section 52-440b.

In relevant part 42 U.S. (Section 602 (a)(17) reads as follows:

> "(a) A state plan for aid and services to needy families with children *must* . . .
>
> (17) provide —
>
> (A) for the development and implementation of a program under which the State agency will undertake —
>
> (i) in the case of a child born out of wedlock who is receiving aid to families with dependent children, to establish the paternity of such child and secure support for him, and
>
> (ii) in the case of any child receiving such aid who has been deserted or abandoned by his parent, to secure support for such child from such parent (or from any other person legally liable for such support), utilizing any reciprocal arrangements adopted with other States to obtain or enforce court orders for support. . . .

Connecticut's General Statutes evidence a scheme of following the above directives mandated by Congress. The laws also fit into the much older Connecticut policy of requiring both parents to support their children, whether they are legitimate or illegitimate. In this regard Connecticut law has long provided for paternity proceedings to establish the identity of the illegitimate child's father and require him to pay support. It is further the policy of the state when it is contributing through public assistance to the support of children or other persons to obtain and enforce support orders against any

relatives legally liable to support the person receiving public assistance. Connecticut General Statute Sections 17-320, 17-59, 17-82e, 17-323a, 17-324, 46-10, 46-26, 53-304; see also Uniform Reciprocal Enforcement of Support Sections 17-327 through 17-355b and Paternity Proceedings Sections 52-435a through 52-445 (including the statute at issue here.)

This Court has recognized the State's right to recoup amounts expanded from the public funds in the interests of indigents. *James* v. *Strange* 407 U.S. 128, 138-139 (1972); *Rinaldi* v. *Yeager*, supra at 311. While recoupment may not be undertaken in an unconstitutional manner, the Court has also long held that Equal Protection does not require "things which are diffffferent in fact . . . to be treated in law as though they were the same." *Rinaldi* v. *Yeager*, supra at p. 309; *Tigner* v. *Texas*, supra at 147. It has no where in this action been contested that the only source of information available concerning the identity of the fathers of illegitimate children is their mothers. Here the state has provided the necessary sustenance for the illegitimate children in many cases and it is rational that it, the town which is giving the child general assistance, or the guardian or guardian ad litem of the child should proceed to enforce the primary obligation of the child's' parents, including the father of an illegitimate child, to support that youngster.

Further, the Appellants should not be heard to argue that because there is a possibility that some of the putative fathers cannot be located, may not be amenable to process, or may be judgment — proof the state's interest in recoupment is not a legitimate state purpose. In *James* v. *Strange*, supra at p. 133-134, it was clearly stated:

> "We do not inquire whether this statute is wise or desireable, or 'whether it is based on assumptions scientifically substantiated.' *Roth* v. *United States* 354 U.S. 476 (1957) (Separate Opinion of Harlan, J.) Misquided [sic] laws

may nonetheless be constitutional. It has been noted both in the briefs and at argument that only $17,000 has been recovered under the statute in its almost two years of operation, and that this amount is negligible compared to the total expended. [Footnote indicated $400,000 had been appropriated to fund the program in one year alone.] Our task, however, is not to weigh this statute's effectiveness ' it its constitutionality. Whether the returns under the statute justify the expense, time and efforts of state officials is for the ongoing supervision of the legislative branch."

Even if the Connecticut legislature had not seen fit to provide for recoupment from parents of children on AFDC, the federal statutes would require them to do so as noted above. In addition there is no evidence tending to prove the Appellants' claim that the amounts collected by such a program would be negligible. As is apparent from the data tables in evidence before this Court, 9.9% of the births recorded in Connecticut in 1971 were, on the face of the records, illegitimate, i.e., no father was named on the birth certificate (this obviously does not include those children born to married women who are later determined not to be issue of the marriage at the time of a dissolution of marriage or other judicial proceeding). See Appendix pp. 56-61. Thus, it is apparent that a substantial number of children born in Connecticut are illegitimate. Further, the transcripts and decision submitted by the Appellants show that far from all of the putative fathers are men of so little substance that they are unable to pay support. See *Norton* v. *Larracuente,* supra and *Welfare Commissioner* v. *A.M.M.*, Case V, Appendix of Childrens' Brief.

The only rights involved in this case which even approach the point of being fundamental are the rights of illegitimate children to support — to sustenance. However, this involves not only the right to current support but also the potential right to Society Security, Veterans' or other Benefits which

may later be available to the child following the death of his putative father. Appellants argue that for the purpose of obtaining these benefits) is not essential that paternity have been established in the past; however, it cannot be doubted that the closer one is in time to the events sought to be established the more likely it is that necessary evidence is available and the more easily the child's paternity can be determined. The further argument is made that in some cases a paternity action may establish that a man who has been voluntarily contributing to the support of an illegitimate child under the impression that he is the father actually is not the father so that child would lose the support payments he had been getting. This hardly seems probable as one who has voluntarily contributed support is not likely to be one who would contest a paternity action and it would be only in a contested paternity action that such a finding would be made. Further, if there should be a court finding that the man is not the child's father then it appears that it would not be equitable for the child to receive support from him (unless, of course, knowing he is not the father he chooses to continue to contribute gratuitously to the child's support.)

Finally, there is the psychological advantage which comes to the child from having his paternity established, from knowing who his father is. Also there is the security which comes from knowing that one's father is contributing what he can to support the child even though under order of the court and even if it is not in an amount large enough to remove the child from the Welfare rolls. There is, too, the fact that children who are not in need of welfare (and this includes those currently on welfare who may go off in the future) may, through the establishment of paternity and support, become able to receive more advantages such as a better education as a result of paternal support than the mother or guardian alone is able to provide for them.

It is submitted that if the Appellants wish to quarrel with what the Connecticut Legislature feels is in the best interest of illegitimate children that is the body to which they should present their complaints, not to the Courts. There is no fundamental, constitutionally protected interest of the Appellants which is affected by Section 52-440b. The statute establishes a reasonable classification because it bears a rational relationship to a legitimate state purpose. And, in any case, equal protection is not violated because the interests represented by the state in this case — those of the illegitimate child to support by his father and those of the public in promoting and protecting the relationship and duties of parent and child as well as to reimbursement from legally liable relatives for monies expended to support the child — are sufficiently compelling to justify state intervention in this instance.

CONCLUSION

The Appellee urges this Court to find that the Appellant-mothers have not established the existence of a constitutionally protected right to the absolute privacy that they assert. In addition, Section 52-440b does not conflict with any provision of the Federal Social Security Act, and in fact, Section 52-440b carries out the policies of 42 U.S.C. 602(a)(17)(i) and (ii). In view of the infringement upon the rights of the children as the Appellee has heretofore pointed out, of the purpose and reasonableness of Section 52-440b, and of the fact that there has been no denial of equal protection or due process the Appellant-mothers have failed to establish any error on the part of the lower Court.

The Appellee, Welfare Commissioner for the State of Connecticut, requests that the judgment of the court below be sustained and that this appeal be dismissed.

Respectfully submitted,

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Counsel for the Appellee wish to express their appreciation for the great amount of work done on the case below by former Assistant Attorney General James M. Higgins who has recently resigned from this office and to Gary G. Williams and Sharon Haskell for their assistance in preparing this brief.

MOTION FILED

JUN 19 1974

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-6033

SHARON ROE, ET AL., *Appellants*

v.

NICHOLAS NORTON, Commissioner of Welfare of the State of Connecticut, *Appellee*

On Appeal from the United States District Court for the District of Connecticut

MOTION FOR LEAVE TO FILE BRIEF, AMICI CURIAE AND BRIEF AMICI CURIAE

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For the American Academy of Child Psychiatry; the American Association of Psychiatric Services for Children; the American Orthopsychiatric Association; the American Parents Committee, Inc; the Center for Community Change; the Child Welfare League of America, Inc.; the Connecticut Child Welfare Association; the Consortium on Early Childbearing and Child Rearing; the Council of Jewish Federations and Welfare Funds; the Day Care and Child Development Council of America, Inc.; the Family Service Association of America; the Interreligious Foundation for Community Organization; the National Association for the Advancement of Colored People; the NAACP Legal Defense and Educational Fund, Inc.; the National Association of Social Workers; the National Conference of Catholic Charities; the Catholic Charities of Norwich, Connecticut; the Catholic Charities of Bridgeport, Connecticut; the National Council of Churches of Christ in the United States of America; the National Federation of Settlements and Neighborhood Centers; the National Urban League, Inc.; the Puerto Rican Legal Defense and Education Fund, Inc.; the Salvation Army; the United Church of Christ, Board of Homeland Missions, Health and Welfare Division; the United Presbyterian Church in the United States of America, Health and Welfare Development Unit; the Young Women's Christian Association of the United States of America; and the Children's Defense Fund of the Washington Research Project, Inc.

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Inc.; the Family Service Association of America; the Interreligious Foundation for Community Organization; the National Association for the Advancement of Colored People; the NAACP Legal Defense and Educational Fund, Inc.; the National Association of Social Workers; the National Conference of Catholic Charities; the Catholic Charities of Norwich, Connecticut; the Catholic Charities of Bridgeport, Connecticut; the National Council of Churches of Christ in the United States of America; the National Federation of Settlements and Neighborhood Centers; the National Urban League, Inc.; the Puerto Rican Legal Defense and Education Fund, Inc.; the Salvation Army; the United Church of Christ, Board of Homeland Missions, Health and Welfare Division; the United Presbyterian Church in the United States of America, Health and Welfare Development Unit; the Young Women's Christian Association of the United States of America; and the Children's Defense Fund of the Washington Research Project, Inc.

The organizations listed above, all of which have shown a continuing, substantial interest in child welfare, respectfully move this Court, pursuant to Rule 42(3), for leave to file a brief amicus curiae in this action. The attorneys for appellants have consented to the filing of the attached brief.

THE INTEREST OF AMICI

The Washington Research Project Inc. was established in 1968. The Children's Defense Fund was established by it in 1972. The Children's Defense

Fund focuses principally on the area of children's rights, where it seeks systematic reforms on behalf of all the nation's children, but with particular attention to the special problems of minority and poor children. The Children's Defense Fund's work to vindicate the rights of all children, depends, among other things, on eliminating the vestiges of discrimination against particular children at all levels of governmental policy-making. The statute involved in this case constitutes such discrimination.

The Children's Defense Fund is joined in this amicus brief by national and Connecticut organizations dedicated to the welfare of children, as follows:

The American Academy of Child Psychiatry is a professional society of physicians who are members of the American Psychiatric Association and who are qualified in child psychiatry. Its purpose is to stimulate and advance medical contributions to the knowledge and treatment of psychiatric problems of children. The issues raised by this case are of importance to the Academy because of their relationship to the healthy emotional development of infants and children.

The American Association of Psychiatric Services for Children comprises 180 organizations with a principal interest in providing and/or planning mental health services to children. Among other purposes, it seeks to represent the clinical perspective in those areas which bear upon the emotional development of children. The Association is concerned with the issues in this case because it is aware disruption of mother-child relations presents a serious threat to the intellectual, emotional and social development of infants and young children.

The American Orthopsychiatric Association is a national professional association of psychiatrists, psychologists, social workers and other professionals in the mental health field. Its purpose is to foster research and spread information concerning scientific work in the field of human behavior. The Association is concerned with the issues in this case and the threat they pose to the illegitimate children affected.

The American Parents Committee, Inc. was incorporated in 1947 as a non-profit, non-partisan public service association whose purpose is to work for federal legislation on behalf of the nation's children in the fields of education, child health, child welfare, juvenile delinquency, day care and family planning. The instant case raises an issue of concern to the Committee since research has shown that maternal deprivation impairs the healthy development of children, undermines the essential parental role of their mothers and leads to disruption rather than the strengthening of family life.

The Center for Community Change is a national organization devoted to assisting community development in low income, inner city areas. Its concern in this case arises out of its awareness of the need to assist families in low income inner city areas, rather than subjecting them to additional discriminatory disabilities.

The Child Welfare League of America, Inc. is a national organization with 380 local child welfare agency affiliates, devoted to securing public understanding, interest and support of programs that enhance the well-being of children and that insure the

protection and services they require. Its interest in this case arises from its concern that Conneticut, instead of assuring protection and services to those families most in need and so enhancing the well-being of children, threatens the mother-child relationship and the security of the child.

The Connecticut Child Welfare Association is a statewide organization dedicated to child advocacy and the advancement of child welfare for all children in Connecticut. As a child advocate in Connecticut, it has special concerns about the issue raised in this case. The Association regards the statute as likely to chill applications for public aid for children entitled to such aid, and as creating discriminatory, cruel state action against children who are poor and illegitimate.

The Consortium on Early Childbearing and Child Rearing is a cooperative organization devoted to research utilization and information sharing geared to helping communities improve services to adolescent school-age mothers, young fathers and their infants. The issues raised in this case are vital to working with young parents and their infants. Since the Connecticut statute would impede constructive efforts to help such parents and children and would discriminate against many of them by reason of poverty and illegitimacy, the Consortium is interested in this case.

The Council of Jewish Federations and Welfare Funds is the membership association and joint instrument of 225 local Jewish Federations, Welfare Funds and Community Councils in the United States and Canada. These organizations provide a wide range of services to parents and children. Through the Council they work together on common regional, national and

overseas problems. The Council is deeply concerned with the effects of this Statute upon services to young families most in need and the new discriminatory barriers to the rendering of such services which are raised by it.

The Day Care and Child Development Council of America, Inc. is a national organization devoted to promoting high standards and adequate provision of day care for all children who need and could benefit from it. The issues in this case are of special concern to the council because their resolution will determine whether a state can be permitted to intervene in the development of a child by removal of his sole guardian at the time in his life when maternal care is most crucial.

The Family Service Association of America is a membership federation of more than 340 community supported and community serving family agencies, each of which exists to aid families and individuals with personal or social needs and to advocate action for the needs of families under stress. The Association's interest in this case stems from its commitment to aid families with such needs. No group is more in need than that represented by the children in this case.

The Interreligious Foundation for Community Organization is an organization engaged in the field of social action to effect sound public policy in regard to social issues. It supports this challenge to the Connecticut statute because it regards the statute as unjust and oppressive and as leading to a cycle of poverty through denial of support to children in their natural homes.

The National Association for the Advancement of the Colored People is a non-profit association representing the interests of approximately 500,000 members in 1,800 branches throughout the United States. Since 1909, the NAACP has sought to establish and protect the civil rights of minority citizens. In this respect, the NAACP has often appeared before the Supreme Court as amicus in cases involving school desegregation, employment, voting rights, jury selection, capital punishment and other cases fundamental human rights. It joins in this brief because this case threatens the civil rights of mothers and their children to remain together and not be subjected to threats of separation by reasons of poverty, illegitimacy or race.

The NAACP Legal Defense and Educational Fund, Inc. is a non-profit corporation incorporated under the laws of the State of New York in 1939. It was formed to assist blacks in securing their constitutional rights by the prosecution of lawsuits. Its purposes include rendering legal aid gratituously to blacks, suffering injustice by reason of race, who are unable, on account of poverty, to employ legal counsel on their own behalf. For many years, its attorneys have represented parties in this Court and participated as amici in this Court in cases involving many facets of law, including the rights of welfare recipient.s The present case is of particular importance to the Legal Defense Fund becaus it centers around a state effort to place a stigmatizing burden upon a group of children most of whom are poor and non-white.

The National Association of Social Workers is the professional association of social workers with 52,000 members in 172 chapters. Its purposes include the improvement of social conditions as well as activities

designed to strengthen the profession. The issues in this case are of importance to the NASW because they reflect a trend to further impair the development and treatment of illegitimate children who are poor and in need of services.

The National Conference of Catholic Charities is the central national organization for Catholic charities in the United States. It is joined by two of its affiliates, Catholic Charities of Norwich, Connecticut and Catholic Charities of Bridgeport, Connecticut. This case is of importance to the Catholic Charities because the Connecticut statute threatens the only family unit for a child born out of wedlock and may deprive the child of the care and protection of his mother. Such action violates the sanctity of the family.

The National Council of Churches of Christ in the United States of America is a federation of 33 Protestant and Eastern Orthodox denominations, comprising 139,962 churches with 42,278,990 members. The NCC has long been concerned that everyone should be able to enjoy a decent standard of living without regard to race, color or religion and has expressed distress at various restrictions place upon public assistance programs such as that embodied in the Connecticut statute challenged in this case.

The National Federation of Settlements and Neighborhood Centers is the national association of 447 centers in 90 cities and 20 states, founded in 1911 by Jane Addams. Settlement houses work for community change affecting families, individuals, community groups and their social environment. As heirs to the pioneering work of Jane Addams, they are concerned with achieving constructive community

change. This case is of great importance to the Federation because the Connecticut statute constitutes harsh, hostile and discriminatory coercion of those who are poor and powerless.

The National Urban League, Inc. is a national organization, with affiliates in 98 cities, devoted to assisting urban communities with minority group problems that develop out of segregation, discrimination and neglect in overcrowded population areas. This case is of great significance to the League because the Connecticut statute places further burdens on those already faced with problems that result from segregation, discrimination and neglect of their social needs. The League views this statute as one more shocking attempt to chill welfare applications from the poor.

The Puerto Rican Legal Defense and Education Fund, Inc. is an organization devoted to protecting and promoting the legal rights of Americans of Puerto Rican background. Its interest in this case is due to the steady and mounting attacks on indigent Puerto Ricans which seek to deprive them of entitlement to aid under Federal law. It sees the Connecticut statute as an effort to chill applications for welfare.

The Salvation Army is a religious and charitable organization carrying out a variety of programs designed to promote the spiritual life and material well-being of all people. Its interest in this case stems from its view that the Connecticut statute is an attempt to avoid and cast aside illegitimate children if they are poor and need public aid. It regards this approach to human problems as violating the right of all inhabitants of this land to assistance when in need.

The United Church of Christ, Board of Homeland Missions, Health and Welfare Division is the central agent for the United Church of Christ's activities in the fields of health and welfare. Its concern is for improvement of the health and welfare of all people, with special concern for poor and minority groups. It opposes any state action like Connecticut Statute 52-440b which separates or segregates those who are entitled to assistance or seeks to demand of recipients of aid conditions that are humiliating or coercive.

The United Presbyterian Church in the United States of America, Health and Welfare Development Unit, is the central organization for agencies and individuals primarily interested in issues of health, education or welfare. The membership includes community centers and neighborhood houses, and health agencies—including hospitals, nursing and convalescent homes, out-patient clinics, chaplaincies, services to children and families, and services to the aging. Its interest in this case springs out of concern for services to children and their families. The Connecticut statute undermines equal access to services, segregates and coerces applicants and denies full access to benefits to poor children.

The Young Women's Christian Association of the United States of America is a national organization with 1,463,000 individual members and 6,800 local units. Its common goal is that of helping all women and girls make their full contribution to society. Its interest in this case stems from its opposition to the imposition of conditions of aid on those who need it on the ground of birth, status and poverty. It believes that the Connecticut statute fails to promote the welfare of all children and equal justice for all under the law.

This case raises serious questions as to the constitutional right of illegitimate children to be raised by their natural mothers. The above organizations, dedicated to the welfare of children, believe that this brief will be of assistance to the Court in its consideration of the issues involved.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-6033

SHARON ROE, ET AL., *Appellants*

v.

NICHOLAS NORTON, Commissioner of Welfare of the State of Connecticut, *Appellee*

On Appeal from the United States District Court for the District of Connecticut

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BRIEF AMICI CURIAE

For the American Academy of Child Psychiatry; the American Association of Psychiatric Services for Children; the American Orthopsychiatric Association; the American Parents Committee, Inc.; the Center for Community Change; the Child Welfare League of America, Inc.; the Connecticut Child Welfare Association; the Consortium on Early Childbearing and Child Rearing; the Council of Jewish Federations and Welfare Funds; the Day Care and Child Development Council of America, Inc.; the Family Service Association of America; the Interreligious Foundation for Community Organization;

the National Association for the Advancement of Colored People; the NAACP Legal Defense and Educational Fund, Inc.; the National Association of Social Workers; the National Conference of Catholic Charities; the Catholic Charities of Norwich, Connecticut; the Catholic Charities of Bridgeport, Connecticut; the National Council of Churches of Christ in the United States of America; the National Federation of Settlements and Neighborhood Centers; the National Urban League, Inc.; the Puerto Rican Legal Defense and Education Fund, Inc.; the Salvation Army; the United Church of Christ, Board of Homeland Missions, Health and Welfare Division; the United Presbyterian Church in the United States of America, Health and Welfare Development Unit; the Young Women's Christian Association of the United States of America; and the Children's Defense Fund of the Washington Research Project, Inc.

INTRODUCTION

We present this brief in support of the appellants and with their consent.

We rely on the appellants' treatment of this Court's jurisdiction, of the facts as to the individual appellants and of the opinions below.

QUESTIONS PRESENTED

1. Whether the Fourteenth Amendment of the United States Constitution forbids the enforcement of Connecticut Statute 52-440b absent individual consideration of the actual best interests of the children affected by it.

2. Whether the Fourteenth Amendment of the United States Constitution forbids the discriminatory enforcement of Connecticut Statute 52-440b against only one class of people, based on their indigency.

3. Whether the Fourteenth Amendment of the United States Constitution forbids the imposition of the penalty of incarceration, pursuant to Connecticut Statute 52-440b, where the judge has no discretion, because of the defendants' indigency, to give less than the maximum penalty.

4. Whether the Eighth and Fourteenth Amendments of the United States Constitution forbid the incarceration of the mothers of illegitimate children, pursuant to Connecticut Statute 52-440b, as cruel, unusual and disproportionate punishment of these children.

INTEREST OF THE AMICI

The Interest of the Amici is set out, *supra.*, in the Motion for Leave to File this brief.

STATEMENT OF THE CASE

Connecticut Statute Section 52-440b[1] forces the

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[1] Section 52-440b reads:

§ 52-440b. Compelling disclosure of name of putative father and institution of action.

a. If the mother of any child born out of wedlock, or the mother of any child born to any married woman during marriage which child shall be found not to be issue of the marriage terminated by a divorce decree or by decree of any court of competent jurisdiction, fails or refuses to disclose the name of the putative father of such child under oath to the welfare commissioner, if such child is a recipient of public assistance, or to a selectman of a town in which such child resides, if such child is a recipient of general assistance, or otherwise to a guardian or a guardian ad litem of such

mother of an illegitimate child to disclose to the state the name of her child's natural father, and then to prosecute a paternity action against him. If the mother fails to comply either with the duty to disclose or prosecute, she is punishable under the statute for contempt of court. The penalties provided by the statute are a fine of not more than $200 and/or imprisonment for not more than one year.

This statute is the outgrowth of two prior unsuccessful attempts by the state of Connecticut to coerce mothers of illegitimate children who are receiving welfare to name and prosecute the children's natural fathers.

Connecticut's initial attempt was a welfare regulation which provided that if a mother failed to make disclosure of the father's name to the Welfare Department she would be denied Aid to Families with Dependent Children (hereafter AFDC) benefits for her children. This was challenged on the grounds that punishing the children in order to coerce compliance by the mother violated the terms of the AFDC program and the federal Constitution. A three-judge federal district court, reaching only the statutory issue, declared that this provision conflicted with federal eligi-

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child, such mother may be cited to appear before any judge of the circuit court and compelled to disclose the name of the putative father under oath and to institute an action to establish the paternity of said child.

b. Any woman who, having been cited to appear before a judge of the circuit court pursuant to subsection (a), fails to appear or fails to disclose or fails to prosecute a paternity action may be found to be in contempt of said court and may be fined not more than two hundred dollars or imprisoned not more than one year or both.

bility criteria established by Congress for the AFDC program and permanently enjoined its operation. *Doe* v. *Shapiro,* 302 F. Supp. 761 (D. Conn.), *appeal dismissed,* 396 U.S. 488.

The state Welfare Department changed its regulation after the decision in *Shapiro* to provide that if the mother failed to make disclosure, her own AFDC benefits would be cut off. The *Shapiro* court enjoined the new regulation and held that its enforcement constituted contempt of the prior injunction because it had the same harmful effect on the children. *Doe* v. *Harder,* 310 F.Supp. 302 (D. Conn.), *appeal dismissed,* 399 U.S. 902.

Connecticut did not give up. It passed the present statute which differs from the old schemes in two apparent respects. First, it appears to apply across the board to all mothers of illegitimate children, not just AFDC recipients. In fact, however, this appearance is illusory. The state has applied this statute only to mothers receiving public assistance, and has (as set forth more fully below) forced mothers who have refused to disclose the name of their children's father to choose between relinquishing AFDC benefits and going to jail.

Second, the new statute purports to punish the mother, not the child, and to offer the court a continuum of possible punishments, from modest fines to imprisonment (or both). This, too, is illusory. Since the statute has been applied only to mothers receiving public assistance, the choice of a fine is meaningless because they have no money to pay. The *de facto* sanction of the statute as applied to them, then, is imprisonment. Thus while purporting to punish only the

mother, the statute in this case has the devastatingly perverse effect of making the illegitimate child an orphan, a far more serious result than the prior schemes that were invalidated.

The psychological consequences of such separation to the child could be enormous. Specialists in child development and psychiatric medicine are in unanimous agreement that maternal deprivation could stunt the child's psychological, emotional and social development.

The state of Connecticut claims two underlying purposes for this statute: (1) protection of the state's coffers by mitigating the financial burdens imposed in supporting impoverished illegitimate children; and (2) protection of the children's best interests by establishing their paternity "so that they might enjoy the long term psychological and economic advantages to be gained thereby." (*Doe* v. *Norton,* 365 F. Supp. at 73.) Yet the statutory scheme applies (1) even though there is no possibility of financial recovery from the father, for example, where the statute of limitations has run, and (2) regardless of proof that disclosure of the father's name in a given circumstance may be utterly contrary to the best interest of the child. Indeed, neither the mother nor the child are allowed an opportunity under the statute to make such a showing. The statute simply presumes that coercion of the mother and disclosure of the father's name will always serve the child's best interest.

The Children's Defense Fund and twenty-seven other organizations committed to the welfare of children, concerned with the cruel treatment of indigent illegitimate children under this staute, offer this brief in support of the appellants' constitutional challenge to

it. The Amici focus particularly on the constitutional rights *of the children* which are abridged by this statute. They demonstrate herein that § 52-450 is unconstitutional because (a) it creates a false, but irrebutable, presumption that forced disclosure or incarceration of the mother is in the child's best interest; (b) it denies the illegitimate children of impoverished mothers the equal protection of the laws; and (c) it imposes upon such children a cruel, unusual and disproportionate punishment.

SUMMARY OF ARGUMENT

This is a case which touches a most fundamental interest embodied in the concept of liberty protected by the Fourteenth Amendment: the right of a child to remain with and be raised by his parents. To be sure, that Amendment does not totally bar the states from legislating in this area. But this is a case in which the state has gone too far.

The state of Connecticut has enacted a statute purporting to serve the best interests of illegitimate children by establishing their paternity through legal action. Its means of enforcement—coercion and/or incarceration of the child's mother—demonstrates that it is precisely the child's interest that the statute destroys.

The Statute does not permit a case-by-case review of the child's best interests but operates on the basis of an irrebutable presumption that the child's interests will be served best by the coercion and incarceration of his mother as a means of establishing paternity. The state's insistence on this presumption, despite persuasive evidence that it is harmful to the children in whose name it is used, is unconstitutional.

Moreover, the state applies this statute in cases where no legitimate interest of the child (or the state) can conceivably be served by it. To coerce or incarcerate the child's mother so indiscriminately is a violation of the child's rights under the Fourteenth Amendment.

Connecticut statute 52-440b, as drafted, applies to all mothers of illegitimate children. It is not applied as written; the state prosecutes only the mothers of illegitimate children who are receiving public assistance. The unequal impact of the manner of enforcement is a violation of the children's rights to equal protection of the laws. This violation is compounded by the fact that the statute operates against the poor. The Connecticut legislature has established penalties for the mother's refusal to disclose the father's name—from fines to imprisonment. Where the mother is poor, the judge cannot exact a fine and must send her to prison. Thus the child's mother is singled out because she is poor and incarcerated because she is poor all in violation of the Fourteenth Amendment.

Finally, the incarceration of mothers of illegitimate children works an obvious punishment upon these children. This punishment is severe and without justification and it violates these children's rights to be free from cruel and unusual punishment as guaranteed by the Eighth and Fourteenth Amendments.

I. THE ENFORCEMENT OF CONNECTICUT STATUTE 52-440b, WITHOUT CAREFUL INDIVIDUAL CONSIDERATION OF THE ACTUAL BEST INTERESTS OF THE CHILDREN INVOLVED, DEPRIVES ILLEGITIMATE CHILDREN OF THE FUNDAMENTAL RIGHTS AND LIBERTIES GUARANTEED TO THEM BY THE FOURTEENTH AMENDMENT.

A. THE RIGHT OF A CHILD TO BE RAISED BY HIS NATURAL PARENTS IS A FUNDAMENTAL RIGHT IMPLICIT IN THE CONCEPT OF LIBERTY THAT MAY NOT BE DEPRIVED WITHOUT DUE PROCESS.

The due process clause of the Fourteenth Amendment is a constitutional guarantee of respect for those personal immunities which are "so rooted in the traditions and conscience of our people to be ranked as fundamental." *Snyder* v. *Massachusetts,* 291 U.S. 97, 105 (Cardozo, J.).

The interest of parents and children [2] in establishing and maintaining a coherent, private family unit, free from domination by the state, is indisputably a paramount and protected interest.[3]

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[2] Of course, most cases which deal with the fundamental interests of family life were brought by and for parents to protect their rights to privacy in family life and child rearing. The court has dealt with the issues as they regard these parental rights. Within the purview of both *Meyer* v. *Nebraska, infra.* and *Pierce* v. *Society of Sisters, infra.* however, are expressions consistent with a holding that a child has a fundamental interest in the protection of his family as well. *Cf. In re Gault,* 387 U.S. 1, which states:

> [N]either the Fourteenth Amendment nor the Bill of Rights is for adults alone. [where the state directly abridges a child's rights,] it is necessary that the basic requirements of due process and fairness be satisfied.

[3] *Cleveland Board of Education* v. *La Fleur,* 94 S.Ct. 791; *Roe* v. *Wade,* 410 U.S. 155; *Loving* v. *Virginia,* 388 U.S. 1, 12; *Griswold* v. *Connecticut,* 381 U.S. 479; *Pierce* v. *Society of Sisters,* 268 U.S. 510; *Meyer* v. *Nebraska,* 262 U.S. 390. *Cf. United States* v. *Orito,* 413 U.S. 139, 142; *Prince* v. *Massachusetts,* 321 U.S. 158, 165; *Skinner* v. *Oklahoma,* 316 U.S 535.

B. WHILE THE STATES ARE NOT PRECLUDED FROM LEGISLATING IN AREAS WHICH ABRIDGE SOME FAMILY INTERESTS, THEY MAY DO SO ONLY IF THE INTEREST TO BE SERVED CONCERNS THE ACTUAL WELFARE OF CHILDREN, WHERE THAT INTEREST OUTWEIGHS THE FAMILY INTEREST, AND WHERE THE LEGISLATION IS NARROWLY DRAWN TO EXPRESS ONLY LEGITIMATE STATE INTERESTS. CONNECTICUT STATUTE 52-440b MEETS NONE OF THESE CRITERIA.

Legislation restricting the liberty and privacy of family life must have a demonstrable relationship to valid state purposes:

> The essential doctrine is that these liberties may not be interfered with, under the guise of protecting the public interest, by legislative action which is arbitrary or without reasonable relation to some purpose within the competency of the State to effect.
>
> *Meyer* v. *Nebraska,* 262 U.S. 390, 400.

Where such legislation specifically restricts the freedom of parents to make decisions affecting the welfare of their children, the Court has imposed an even heavier burden on the state—that it demonstrate that the legislation benefits substantially the welfare of the children affected.[4]

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[4] Of course, the fiscal interest of the State is not disregarded either by the Attorney General or the court below. See State's brief at 4; *Doe* v. *Norton, supra.,* at 73 n. 10.

Neither this interest nor the interest of the state in obtaining, by the most efficient means, the name of the father [see State's brief at 1] we submit, is sufficient to establish constitutionality where the statute is detrimental to the welfare and best interests of the children it affects. Where the legislation specifically restricts the freedom of parents to make decisions affecting the welfare of their children, the Court has imposed a heavy burden on the state. The state must demonstrate not merely that the legislation serves a permissible state purpose, but it must prove that the restriction is

In addition to the Constitutional requirement that the state show a demonstrable, actual relation between the welfare of children and the challenged legislation, the state must demonstrate that the legislation is narrow enough to "express only the legitimate interests at stake." *Roe* v. *Wade,* 410 U.S. 155 (1973). Connecticut Statute Section 52-440b palpably fails to do this. It restricts the child's right to remain with his parents but does not serve the best interests of the child in all

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necessary for *and actually promotes the welfare of the children affected by it.* For example, in *Wyman* v. *James,* 400 U.S. 309, a New York statute which permits AFDC caseworkers to make unannounced home visits to determine if dependent children are being abused or neglected was upheld against the mothers' challenge that it restricted their privacy. The Court recognized the mother's rights to privacy and to make decisions for her child but it held that her rights were properly limited by this statute.

Where the state clearly proved a countervailing interest in the welfare of the child, the Court said:

> The public's interest in this particular segment of the area of assistance to the unfortunate is protection and aid for the dependent child. The focus is on the *child,* and, further, it is on the child who is *dependent.* There is no more worthy object of the public's concern. The dependent child's needs are paramount, and only with hesitancy would we relegate those needs, in the scale of comparative values, to a position secondary to what the mother claims as her rights. *Wyman* v. *James, supra.* at 318.

Likewise, in *Prince* v. *Massachusetts, supra.,* the Court upheld the state's power to prevent children from selling religious newspapers on the streets at night. The Court recognized the "[i]t is cardinal with us that the custody, care and nurture of the child reside first in the parents." *Id.* at 169. But it found that in this instance the family interest was outweighed by the overriding need to safeguard the children's welfare:

> [The parent claims the right to] authority in her own household in the rearing of her children . . . . Against these sacred private interests, basic in the democracy, stand the interests of society to protect the welfare of children.
>
> *Prince* v. *Massachusetts, supra.* at 165.

cases. Instead it creates an irrebuttable presumption that coercion of the mother and disclosure of the name of the putative father are in the best interests of the child, though it can be demonstrated that in many, if not most, cases the child's best interests will not be served thereby. Moreover, the statute is not drawn narrowly to express only the legitimate interests of the state in advancing each child's welfare. Rather, it applies to a wide range of situations in which the child's interests cannot conceivably be served.

(1) Unconstitutional Presumption

The state has, in its enforcement of this legislation, created an unconstitutional presumption that in all cases the child's best interests are served by the statute. It has alleged, and the District Court below found, that in all cases the primary purpose of the statute is the protection and establishment of the present and future interests of the illegitimate child 1) by establishing his paternity shortly after his birth and 2) where the mother does not volunteer the father's name, by her forced disclosure and prosecution of the father for non-support. The state argued *inter alia,*

> Aside from the matter of support, there are other valuable, existing and potential rights, that the illegitimate child has, or may have, that demand the ascertaining and establishing of his paternity.
>
> He has the potential right to share in the social security benefits and Veterans Benefits . . ., and the rights of the illegitimate child to be treated without discrimination. . . .
>
> The status of legitimacy, or of having knowledge and proof of one's paternity is a real and substantial asset to a person. . . . It means for example, that when an application for employment, or security clearance, or a passport or any of the myriad of forms that we file in our daily lives, are filled out by an illegitimate child, he can fill in the blanks pertaining to "FATHER" . . . .
>
> Next we must consider the question of rights that . . . may attach in the future with respect to inheritance. . . .[5]
>
> There exists . . . the valuable status of being the child of an individual male. . . . [T]o have one's paternity established by whatever suitable means, probably confers upon the child membership in a class of children who can take estates under documents of testacy.

State's brief at 5-7.

The Court below expressly accepted the state's characterization of the purpose of the statute:

> [T]he scope of this statute was intended not only to protect the state's coffers but also to establish the paternity of all illegitimate children so that they might enjoy the long-term psychological and emotional advantages to be gained thereby.
>
> *Doe* v. *Norton, supra,* at 73 n.10.

and it found that disclosure would invariably be in the interests of the child, stating that "[i]nstead of operating to the disadvantage of children born out of wedlock the statute operates to their benefit." *Id.* at 79.

This assumption is patently incorrect and is directly in conflict with the psychological and factual data available on this subject. In many, and we think most

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[5] Connecticut Statute 45-274 permits an illegitimate child to inherit from his father only if his natural parents later intermarry. Thus, an illegitimate child who establishes his paternity stands to gain nothing, under Connecticut law, from his natural father's estate.

cases, the advantages which may be gained by the identification of the putative father are far outweighed by the detrimental psychological effects on the child of coercion and/or incarceration of his natural mother.

(a) Coercion creates tension and anxiety for the mother which is harmful to her child.

Where the state compels the mother to disclose the father's name against her best judgment, it will inevitably be creating tension and anxiety for the mother. This tension and anxiety will be especially destructive for a child who is already suffering from the handicap of an absent parent. The mother may blame the child for creating strain between her and the father. Where this occurs, the harm to the child will be compounded because the anxiety felt by the mother may find its expression as anger and resentment at the child for being the cause of mother's embarrassment. Affidavit of Edward Zigler, Ph.D., Children's Exhibit 5 at 5, Joint Appendix.

(b) Forced disclosure and prosecution threatens the father-child relationship.

If the natural father has some tenuous relationship with his child, the fact of disclosure (and prosecution) by the mother may serve to permanently alienate him from both the mother and the child.

> [T]he father would avoid contact with the child which otherwise he might maintain and he might avoid contact with the mother . . . if he feels that the condition for the relationship is one required by the law in order to provide economic support for the child.

Deposition of Albert J. Solnit, M.D., Children's Exhibit 1 at 7, Joint Appendix.

(c) Identification of the father prevents the child's psychological and emotional adaptation to the fact of his illegitimacy.

Where the child does not know his father, psychological and emotional adaptation to his status of illegitimacy may actually be threatened by the disclosure of the father's identity. Child psychiatrists have found that the child can best adapt to the father's absence by "imagin[ing] a father who is larger than life to help overcome his sense of loss at not having a father present in his home. Part of this idealization includes a belief that the father wants to come live with the family and the child but for some reason is unable to. This creation of an idealized image of a father is frequently the most successful adjustment possible for a child." Affidavit of Edward Zigler, *supra.* at para. 6.

Learning the father's identity is likely to impair his psychological adjustment.

> When a child learns who his father is, he has to cope with the knowledge that his father is not ideal but may be . . . someone the child is ashamed to have for a father. In such a situation the child's self-image will be severely damaged. . . . [He] may model himself after his image of his real father [which is] likely to be bad—to coincide with society's image of men who are unwilling to support their families and desert their children. . . .
>
> The child's self-image will also be severely damaged . . . where [the knowledge of his father's identity] brings home the fact of the father's failure to live in the home. A young child will assume that his father is absent because the child is unworthy in some way or because his father hates him.

Affidavit of Edward Zigler, *supra.* at para. 7, 8.

In sum, "disclosure—and particularly compelled disclosure—of the identity of a child's father . . . will in many cases be extremely destructive to the child's emotional well-being." *Id.* at para. 3.

(d) The incarceration of the mother will interfere with the child's emotional and psychological development.

In cases where the mother refuses to disclose the father's name,[6] and where she is incarcerated pursuant to Section 52-440b, the potential for psychological and emotional harm to the child is greatly increased.

The statute of limitations applicable to paternity actions is three years.[7] Thus, in most cases, the child whose mother is incarcerated will be under three years of age. Leading child development authorities have shown that maternal deprivation during the crucial

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[6] And where, as in Connecticut, the reasons for her failure to do so are not considered. See *infra.* at 21-26.

[7] Connecticut Statute Section 52-440a provides, in pertinent part,

> No petition [to establish paternity] shall be brought after three years from the birth of such child, or after three years from cessation of contribution toward support of the child by the putative father, whichever is later. . . .

The transcripts of hearings in the Connecticut Circuit Court, Ninth Circuit show that, in all cases, the children were under three years of age.

Date of Hearing			
April 2, 1973	Maria Harcega	born 2/16/72	1 year + 6 weeks
	Ann Abascal		18 months
	Susan Bilodeau	1/12/71	26 months
	Cynthia Iverson	7/ 4/72	9 months
May 7, 1973	Phyllis Clarke	1/ 3/73	4 months
Oct. 2, 1973	Sharon Burr	3/31/71	2 years + 6 months
	Rosalyn Carr	11/ 1/71	1 year + 5 months

[The complete transcripts of these hearings are attached as Appendix A hereto.]

early years of a child's life may be psychologically and emotionally disastrous:

> Disruptions of continuity have different consequences for different ages. In infancy . . . any change in routine leads to food refusals, digestive upsets, sleeping difficulties and crying . . . Change of the caretaking person for infants and toddlers further affects the course of their emotional development. Their attachments at these ages are as thoroughly upset by separations as they are effectively promoted by the uninterrupted presence of a familiar adult. *When infants and young children find themselves abandoned by the parent, they not only suffer separation distress and anxiety but also setbacks in the quality of their next attachments, which will be less trustful.* They tend to grow up as persons who lack warmth in their contacts with others . . . . *Adults who as children suffered from disruptions in continuity may themselves treat their children as they were treated—continuing a cycle costly both for a new generation of children as well as for society itself.* (emphasis added.)

Freud, Goldstein and Solnit, *Beyond the Best Interests of the Child* at 31-34 (emphasis added).

Among the growth processess of the child which may suffer the greatest damage are those which society and the state should do most to engender and support, e.g., educational ability, cognitive development and the capacity to work productively in society:

> Certain findings point to the likelihood that maternal deprivation has a specially adverse effect on particular processes. Among intellectual processes, the most vulnerable seem to be language and abstraction. Among personality processes, the

> most vulnerable seem to be those underlying the ability to establish and maintain deep and meaningful interpersonal relations and the ability to control impulses in the interests of long range goals.

Bowlby, *Child Care and the Growth of Love* at 219.[8]

The court below erroneously stated that enforcement of Section 52-440b will not harm the child because the consequences of maternal deprivation will be mitigated

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[8] In cases where the child has no other parent (as here) even more severe consequences may result. In a study done for the United Nations, a psychiatrist found that of children in orphanages who received adequate health and nutritional care, many young children died or became mentally retarded without any medical explanation. The psychiatrist concluded that this syndrome, anaclitic depression, was caused by the deprivation of the child's mother:

> We discovered that all children in our sample population who developed this syndrome had one experience in common: at some point between the sixth and eighth month of life all were deprived of the mother. This separation took place for unavoidable external administrative reasons.

Spitz, *The First Year of Life* at 271.

For other discussions of the harmful psychological and emotional effects on children of maternal deprivation, see White, *Federal Programs for Young Children;* Maccoby and Masters, "Attachment and Dependency." *Manual of Child Phychology,* at 73-157; Bowlby, *Attachment and Loss;* Williams, *Children Who Break Down in Foster Homes: A Psychological Study of Patterns of Personality Growth in Grossly Deprived Children,* 2 J. Child Psychol. Psychiat. 5; Yarrow, *Maternal Deprivation: Toward an Empirical and Conceptual Re-evaluation,* 58 Psychol. Bull. 459; Rheingold & Bayley, *The Later Effects of an Experimental Modification of Mothering,* 30 Child Develpm. 363; Scott, *The Effects of Separation from the Mother in Early Life,* 1 Lancet 624; Ainsworth & Boston; *Psychodiagnostic Assessments of a Child After Prolonged Separation in Early Childhood,* 25 Brit. J. Med. Psychol. 170; Glueck & Glueck, *Unraveling Juvenile Delinquency;* Spitz, "Anaclitic Depression," *Psychoanalytic Study of the Child,* Vol. 2 at 313.

(but not prevented) by the state's obligation to provide for alternate care for these children. Even so,[9] the effects of foster care are demonstrably not beneficial for all children. Psychological studies of children in foster care homes and in institutions demonstrate that young children who are separated from their mothers suffer acute distress regardless of the "circumstance and quality of substitute care."[10]

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[9] In fact, the transcripts of state cases show that the state refuses to make arrangements for children whose mothers are to be detained. See, for example, the transcript in *Welfare Commissioner* v. *Rosalyn Carr* (Circuit Court, 9th Circuit, Middletown, Connecticut, October 2, 1973, Hon. Eli L. Cramer, Judge.) In pertinent part, it reads:

THE COURT: You be back here two weeks from today . . . , Mrs. Carr, and you have arrangements made if you do not disclose at that time, you have arrangments made to take care of your child.

See also the Transcript in *Welfare Commissioner* v. *Elizabeth Stone* (Circuit Court, 1st Circuit, Norwalk, Connecticut, January 28, 1974, Hon. G. Sarsfield Ford, Judge.)

THE COURT: I accept her declining to identify the punitive [sic] father. I will continue the matter until next Monday at two o'clock . . . I find her refusal, through you, is an act of contempt at this time. Rather than place her in custody at this time I will give her until next Monday at two o'clock to purge herself from contempt. . . .

I would suggest she get everything in order by next Monday . . . if she is going to be continuing in this position and I have to restrain her, that someone is able to take care of her child and so forth.

MR. GERLIN: And if there is no one?

THE COURT: Then that will be her problem.

Appendix A.

[10] J. Robertson, "Young Children in Brief Separation", *The Psychoanalytic Study of the Child,* Vol. 26 at 265.

There is nothing in the record to show that quality foster care is available for these children and it is unlikely that they will have access to the most desirable foster or temporary care. The women affected by the statute are poor; their immediate relatives are not likely to have the financial resources to be able to care for an additional child during the mother's absence. The children will have to be placed, in all probability, in institutions and outside their natural families.

There is substantial risk that under the Connecticut law the fracture of the mother-child relationship will never be healed. Connecticut law requires the Court to place guardianship of a child whose mother is incarcerated in the Department of Welfare until the child becomes 18 or until the order of guardianship is revoked.[11] For the mother to regain guardianship, she must prove that it is in the best interest of the child to be returned to her custody.[12] The fact of her imprisonment, with the probable loss of the home she had with her child, would hardly prepare her to meet this burden. Studies have shown that the image of foster care as a temporary source oriented to short-term treatment of a family or child is no longer correct. Instead as things stand now, the majority of children who enter foster care are likely to spend their growing years there. This has been shown to be especially true of children who are poor or belong to minority groups, the objects of the Connecticut statute, so that their placement of them in foster care or institutions carries with it an additional danger of permanent separation from their natural families:

> Poverty and living arrangements operate against early return to natural parents . . . It is as if foster care can well be temporary only if the child or parents are tenacious in being visible . . . the desired placement seems least likely to be carried out for the poorest families . . . Children in foster care take their chances; poorer children take a greater chance.[13]

Where it is clear or can be shown that the child's best interests vary with the facts of each family situation, the state cannot constitutionally create an irrebuttable presumption that coerced disclosure or imprisonment is in the best interest of all children.

Assistant Attorney General Higgins stated at oral argument that Connecticut presumes that the enforcement of Section 52-440b will be in the best interests of children in all cases and the state should not allow the mother or the child [14] to rebut this presumption in specific instances.[15]

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[11] Connecticut Statute Section 17-62d.

[12] Connecticut Statute Section 17-62f.

[13] Wiltse, *Foster Care*, 1973: *A Reappraisal*, Public Welfare at at 7.

[14] In other instances where the *actual* harm or benefit to the child is considered relevant by the State, Connecticut statutes provide for the appointment of an attorney to represent the child's interests. See, e.g., Connecticut Statute Section 46-26b.

[15] In his argument to the District Court, the State Assistant Attorney General was asked to clarify this point:

> JUDGE NEWMAN: Do you take the position that in the contempt proceeding the woman has the right to present facts bearing on whether disclosure is in the child's interest? . . .

In fact, Mr. Higgins has accurately described the actual practice of Circuit Court judges as they have applied this statute throughout Connecticut. Excerpts from the transcripts of two cases decided under Section 52-440b illustrate the practice:

The case of *Welfare Commissioner* v. *Elizabeth Stone,* Circuit Court, 1st Circuit, Norwalk, Connecticut, January 28, 1974, Hon. G. Sarsfield Ford, Judge:

MR. GERLIN: Your Honor, we have a situation here, I think, where the law is hard . . . [t]he father of this child is

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Can she litigate that issue in the contempt hearing?

MR. HIGGINS: No, I don't believe that she can, under the statute.

JUDGE NEWMAN: Well, when you say the Circuit Court judge will exercise his discretion what will he exercise it on if she can't litigate that issue?

MR. HIGGINS: He would litigate it on whether or not she would be held liable to the imposition of one of the penalties provided.

JUDGE NEWMAN: Yes. But what issue would he have to resolve to get to that ultimate consequence?

MR. HIGGINS: Well, the issue as in the case I stated, that it was impossible for her to disclose, [that she didn't know the father's name].

JUDGE NEWMAN: That is one. That is really standard—knowledge. What about the more current problem of desirability of disclosure? . . . Would you oppose them litigating that?

MR. HIGGINS: I would oppose them litigating that issue of desirability.

Transcript of the Argument before District Court at 43-45.

a man who has been arrested for narcotics violations, for assault and battery, apparently has been diagnosed as a schizophrenic . . . Now my client is terrified of this man . . . I believe the court should have discretion to examine . . . the Statute should be read so the court does have discretion. The law, I think, is hard.

THE COURT: It may even be harsh. I assume by reason of this citation that . . . [t]here is a child born which is living with her and is the recipient of Welfare Assistance . . . And to date Elizabeth Stone has failed to voluntarily disclose the name of the punitive (sic) father . . . Then under the Statute . . . I will order that she disclose the name of the punitive father . . . I have compassion for her too, but I can't let that shade my obligation to my oath to do what this law says I should do.

The case of *Welfare Commissioner* v. *Robin Janes,* Circuit Court, 16th Circuit, West Hartford, Connecticut, November 27, 1973, Hon. Henry J. Goldberg, Judge:

MR. ALDEN: [D]o you want to tell your Honor why you refused to [disclose the name of the father]?

MS. JANES: He's threatened my life and my daughter's life. He's threatened me physically with his own hands and he has come after me with a gun and he has been on drugs charges and he's also threatened my daughter's life with a gun and I feel that

it's just a danger to me and my daughter's life to state his name ....

THE COURT: I simply want to tell you that we have a statute which in essence states that the mother of a child, your situation, born out of wedlock, may be cited ... to disclose who the father is and if that person refuses to disclose the putative father, that person may be found in contempt of court ....

MS. JANES: Well, ... I'm afraid of him and I'm going to be getting married in the Spring and my fiancee is going to be adopting my daughter and I think it would be harmful to state his name right now because I'm afraid of him.

THE COURT: [T]he statute does give the court the authority to compel you to name the father and if you still refuse, the court here wouldn't have any alternative except to fine you up to $200 and imprison you for not more than one year or both.[16]

Such application collides with the long standing view of this court that

> the wholesale condemnation of a class to ... an invasion of personal liberty, without opportunity

[16] Appendix A. See also affidavit of *Frances Foe*, Plaintiff, who was cited for contempt despite the fact that:

> "the child was conceived either under incestuous conditions or by a person who is emotionally unstable and whose whereabouts [were] unknown to her."

Affidavit of Frances Foe, para. 3(b).

> to any individual to show that his is not the case which would justify resort to it ... is lacking in the first principles of due process.

Skinner v. *Oklahoma*, 316 U.S. 535, 544-45 (Stone, C.J., concurring). *Vlandis* v. *Kline*, 93 S.Ct. 2230; *Stanley* v. *Illinois*, 405 U.S. 645; *Bell* v. *Burson*, 402 U.S. 535; *Carrington* v. *Rash*, 380 U.S. 89.

A similar case to this was presented in *Stanley* v. *Illinois*. There, an Illinois statute purportedly operated "to protect the moral, emotional, mental and physical welfare of the minor and the best interests of the community."[17] It provided that upon the death of their mother, illegitimate children would be declared dependents and be placed in foster care. The state refused to allow the natural father to prove his fitness to have custody of his children. This court held that the state could not, consistently with due process requirements, presume that the child's best interests would not be served by giving his father custody. It stated:

> [T]he State has made its interest quite plain. Illinois has declared that the aim of the Juvenile Court Act is to protect the welfare of the minor. ... But we are here not asked to evaluate the legitimacy of the state ends, rather, to determine whether the means used to achieve these ends are constitutionally defensible. ... We observed that the State registers no gain toward its declared goals when it separates children from the custody of fit parents. Indeed, if Stanley is a fit parent, the State spites its own articulated goals when it needlessly separates him from his family. ...

[17] *Stanley* v. *Illinois*, *supra*. at 1213; compare State's argument in *Doe* v. *Norton*, 356 F. Supp. 202, 207 (D. Conn.) and *Doe* v. *Norton*, *supra*. at 73 n.10.

> It may be, as the State insists, that most unmarried fathers are unsuitable and neglectful parents. It may also be that Stanley is such a parent and that his children should be placed in other hands. But all unmarried fathers are not in this category; some are wholly suited to have custody of their children . . .
>
> *Procedure by presumption is always cheaper and easier than individualized determination. But when, as here, the procedure forecloses the determinative issues of competence and care, when it explicitly disdains present realities in deference to . . . formalities, it needlessly risks running roughshod over the important interests of both parent and child . . . . It therefore cannot stand.* (emphasis added)

Stanley v. *Illinois, supra.* at 1213-15.

Under the standards established by the Court in *Stanley,* Connecticut's enforcement of Section 52-440b unconstitutionally deprives illegitimate children of their right to remain with their natural parent without the individual determination required by due process of law. First, the state categorically assumes that the child's best interests lie in coercion or incarceration of his mother despite significant persuasive evidence that this is demonstrably false in some cases. *Supra.* at 12-21. Second, the state has impermissibly refused to allow consideration of the individualized particular interests of each child in each case. *Supra.* at 21-24.

As in *Stanley,* the state of Connecticut "insists on presuming rather than proving the child's interests" (*Id.* at 1216) despite strong indications that they may not be served by uniform enforcement of Section 52-440b. And as in *Stanley,* the due process clause requires a different approach.

(2) The Statute is Unconstitutionally Over-Inclusive.

The state has unconstitutionally failde to narrow the application of this statute to express only the legitimate state interests at stake in prosecuting paternity actions. Section 52-440b applies to all mothers of illegitimate children regardless of whether

a) the father can be identified; [18]

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[18] While the State Attorney General stated at argument that a mother would not be punished where she could not identify the father, the application of this statute in specific cases has demonstrated that this is not so. See, for example, the case of *Welfare Commissioner* v. *Rosayln Carr,* Circuit Court, 9th Circuit, Middletown, Connecticut, October 2, 1973, Hon. Eli L. Cramer, Judge:

THE COURT:	I am giving you fair warning, Mrs. Carr, that I don't want any games played. Disclose the name. You are under oath. No you have five minutes, I don't want any speeches, just disclose the name.
THE DEFENDANT:	I do not know. I am under oath in the court of the State of Connecticut and I can truthfully say I do not know the name of my child's father.
THE COURT:	Well, I'm going to order you. This is no gross intrusion. Legislature has determined it is not and the United States District Court. Disclose the name and whether it intrudes on your privacy is something you can come forth yourself on later. If you don't I will exercise the penalty by law and I am going to send you to jail.
THE DEFENDANT:	Your Honor, you are trying to make me say something that I don't know . . . [H]aving to be here is a gross intrusion of my privacy.
THE COURT:	If you wish to discontinue it, discontinue being a ward of the State of Connecticut and they will have no right to compel you . . . You be back here two weeks from today, Mrs. Carr, and you have arrange-

b) the statute of limitations for paternity actions has run;

c) the child has a formal acknowledgement of paternity; or

d) the state has another, less intrusive means of establishing the identity of the child's father.

In cases where the father cannot be identified, and the state's enforcement is futile, the child's interest cannot be served in anyway. Thus, the potential harm to the child of coercion and/or imprisonment of his mother clearly outweighs any benefit to the state. Indeed the import of the statute seems purely punitive in these cases. Similarly, in cases where the statute of limitations has run, no paternity action may be instituted by either the mother or the state. Thus, the assertion of state's fiscal interest in obtaining support money is nullified and the child's interest in legally establishing paternity for future benefits is nonexistent.

Where the child has formal acknowledgment of paternity, the child's interest in receiving support or future financial benefits can be enforced by him at his election. This Court has indicated that an illegitimate child's recovery of benefits due his father does not depend on proof that there has been a formal court adjudication of paternity. *Weber* v. *Aetna Casualty Co.*, 406 U.S. 164.

Moreover, the Connecticut legislature could demonstrate its professed claims of concern for illegitimate

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ments made if you do not disclose at that time, you have arrangements made to take care of your child.

Appendix A.

children by legislating away any formal disability of a child to recover benefits from his natural father where credible proof of paternity exists.

Where the state has another, less intrusive means of establishing the identity of the child's father, it should use it rather than be permitted to coerce and/or incarcerate the mothers of young children. The identity of the father can, in some cases, be obtained by mere examination of the birth certificate. This seems a simple step to take. But the state has conceded that it does no independent investigation to determine the identity of the natural father other than to question (and coerce) the mother.[19] It should be required to do so.

Even if the state could show its present methods are more efficient, which we doubt, this statute, as applied, still could not stand:

> [T]he Constitution recognizes higher values than speed and efficiency. Indeed, one might fairly say

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[19] In the deposition of John A. Nadolski, an employee of the Welfare Department of Connecticut, whose responsibility was to establish the paternity of illegitimate children in his district, Mr. Nadolski described the extent of his investigation as follows:

> [Knowledge of the existence of an illegitimate child would come to my attention] at the time of application, through an intake worker, or during an annual review of existing welfare mothers. . . .
>
> [T]he welfare worker would ask the mother who the father of the child is. If at that time the [mother] refuses to name the father . . . I would . . . ask the mother who the father of the child was. I would inform her that under welfare laws, if she refuses to name the father of the child we can . . . cite her to appear before a judge of the Circuit Court . . . . If she still refuses to name the father of the child, I would turn it over to an attorney . . . to cite her.

Deposition of John A. Nadolski, Children's Exhibit 3, Joint Appendix at 4-6. *Accord*, Deposition of Joseph Mancini, Children's Exhibit 4, Joint Appendix at 4-7.

> of the Bill of Rights in general, and the Due Process clause in particular, that they were designed to protect the fragile values of vulnerable citizenry from the overbearing concern for efficiency. . . .

Stanley v. *Illinois, supra.* at 1215.

Where, as here, there exists severe threat of harm to children from coercion and incarceration of their mothers, the state must demonstrate that it has used all other reasonable means to establish paternity prior to embarking on such a drastic course.

> The public interest in this particular segment of the area of assistance to the unfortunate is protection and aid for the dependent child whose family requires such aid for that child. The focus is on the *child,* and, further, it is on the child who is *dependent.* There is no more worthy object of the public's concern. The dependent child's needs are paramount.

Wyman v. *James,* 400 U.S. 309, 318 (1971).

II. CONNECTICUT STATUTE SECTION 52-440b. AS ENFORCED, CONSTITUTES INDIVIDEOUS DISCRIMINATION ON THE BASIS OF WEALTH AGAINST INDIGENT ILLEGITIMATE CHILDREN IN VIOLATION OF THEIR RIGHT TO EQUAL PROTECTION OF THE LAWS IN THAT

A. THE STATUTE IS APPLIED ONLY TO MOTHERS OF ILLEGITIMATE CHILDREN WHO ARE RECEIVING PUBLIC ASSISTANCE.

AND

B. THE SENTENCING JUDGE HAS NO DISCRETION TO MITIGATE OR GIVE LESS THAN THE MAXIMUM PENALTY TO AN INDIGENT DEFENDANT.

A. THE COURT BELOW ERRONEOUSLY REJECTED THE PLAINTIFF'S CLAIM THAT THE STATUTE UNCONSTITUTIONALLY APPLIES ONLY TO THE CLASS OF MOTHERS OF ILLEGITIMATE CHILDREN WHO ARE RECEIVING PUBLIC ASSISTANCE.

The Court held:

> This statute which imposes a duty upon an unwed mother to disclose the name of the putative father of her child does not distinguish between unwed mothers who receive public assistance and those who do not. The statute permits the compelled disclosure of the name of the putative father from any mother of an illegitimate child.

Doe v. *Norton, supra.* at 81.

This statute, while neutral on its face, has in fact been applied only to mothers of welfare recipients. Indeed, the state could not cite a single case brought under Section 52-440b against a mother not receiving public assistance. Transcript of Argument below at 40-41.

This statute was passed by the legislature only after the repeated efforts of the state welfare department to establish administrative procedures for identifying the putative father were rejected. *Doe* v. *Norton, supra.* at 71. As the State conceded in its brief,

> For a long time prior to the decision in *Doe* v. *Shapiro,* 302 F.Supp 767 (D. Conn.), .and *Doe* v. *Harder,* 310 F.Supp. 302 (D. Conn.) the defendant welfare commissioner handled the problem of the non-disclosing mother of an illegitimate child by terminating the public assistance benefits of the mother and the child. After this decision, the defendant commenced to cut off benefits to the mother but not the child. These procedures were held invalid by the Federal courts basically on the

> theory that by so acting the commissioner was adding a condition to AFDC eligibility not provided for in the Federal Social Security Act, and, in effect, was visiting the sins of the mother upon the child. . . .
>
> The severance of welfare benefits having been precluded as a means of ascertaining the identity of the father of a illegitimate child, the legislature determined that it would be proper to cause *these women* to be cited in before the Circuit court to disclose the name of the putative father (emphasis added).

State's brief below at 1-3.

Contempt cases heard subsequently show conclusively that State judges have refused to apply the statute to mothers who have discontinued public assistance or who agree to discontinue it rather than disclose the name of the father.

In the case of *Welfare Commissioner* v. *Susan Bilodeau* (Circuit Court, 9th Circuit, Middletown, Connecticut, April 2, 1973 Hon. Nicholas F. Armentano, Judge.) the judge held the mother could not be cited for contempt unless she was receiving welfare:

MR. CARTA:	Are you willing to disclose the name of the father?
THE DEFENDANT:	No . . . .
MR. CARTA:	Do you know what the statute says? Anyone who refuses to disclose the name of the father could be held in contempt of court . . . Do you understand that?
THE DEFENDANT:	Yes.

MR. CARTA:	And the child is presently a recipient of the State welfare?
THE DEFENDANT:	No . . . You know I'm working.
THE COURT:	[C]heck whether this child is a recipient now . . . Check that because she would have a right to refuse, . . . if the child is not presently a recipient.

The following colloquy occurred in the case of *Welfare Commissioner* v. *Rosalyn Carr,* (Circuit Court, 9th Circuit, Middletown, Connecticut, October 2, 1973):

THE COURT:	Well, I'm going to order you to disclose [the father's name].
THE DEFENDANT:	I feel that it is . . . a gross intrusion of my privacy.
THE COURT:	If you wish to discontinue it, discontinue being a ward of the State of Connecticut and they will have no right to compel you.
THE DEFENDANT:	All right. I will do that if that is what the Court wants, then that is finished.[20]

This court consistently has held that a statute which appears on its face to make a rational classification is unconstitutional if, without a rational basis, it is

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[20] Bilodeau transcript at 6-10; Carr transcript at 27-28. Appendix A. Thus, disclosure has become equivalent to another eligibility requirement and should be prohibited by the prior decisions in *Doe* v. *Shapiro, supra.*, and *Doe* v. *Harder, supra.*

actually applied only to one class of individuals. In *Yick Wo* v. *Hopkins,* 118 U.S. 356, it was stated:

> Though the law itself be fair on its face, and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the constitution.

Yick Wo v. *Hopkins, supra.* at 573-74.

This principle has been applied to cases where the discriminatory application of the statute was based on the invidious classification of indigency. *Boddie* v. *Connecticut,* 401 U.S. 220; *Williams* v. *Illinois,* 399 U.S. 391; *Harper* v. *Virginia Board of Elections,* 383 U.S. 663; *Griffin* v. *Illinois,* 351 U.S. 12. *Cf. Shapiro* v. *Thompson,* 394 U.S. 618.[21] It should be applied here.

B. THE STATUTE CREATES AN INVIDIOUS DISCRIMINATION AGAINST MOTHERS OF CHILDREN RECEIVING PUBLIC ASSISTANCE BECAUSE IT VESTS NO DISCRETION IN THE JUDGE TO PUNISH INDIGENTS EXCEPT BY IMPRISONMENT.

In his concurring opinion in the District Court, Judge Newman stated that a balance should be struck

[21] Of course, classification by indigency implies classification by race. In the separation of children from their natural families, now threatened by Connecticut Statute 52-440b, one finds a disproportionate percentage of children from poor non-white families. The 1970 Census shows that the population of Connecticut is six percent black and ninety-three percent white. United States Bureau of the Census, Characteristics of the Population, 1970, Vol. 1, Pt. 8., Connecticut, Table 18 at 39. However, of the 8,600 recipient families of AFDC in Connecticut, 5,400 were black. HEW, "Characteristics of Recipients" (1971).

in each case between the mother's "constitutionally protected interest . . . in making decisions to maintain the harmony of her family unit" and the state's interest in enforcement of the father's obligations to support his child. He concluded that Section 52-440b permits such a balance to be made:[22]

> The statute accords the state judges ample discretion to determine the appropriateness of contempt remedies in specific cases.

Doe v. *Norton, supra.* at 86.

But the statute is applied only to welfare mothers. Thus discretion allowed by the legislation as to stringency of penalties is nullified by the fact that the mothers cannot afford to pay fines. A judge, faced with a recalcitrant welfare mother, must either disregard his duty under Section 52-440b or give the maximum penalty prescribed imprisonment.[23]

The Constitution should not permit the arbitrary imposition of jail sentences on indigents where the legislature has provided for the imposition of a fine under appropriate circumstances. To impose prison sentences in such cases is an invidious discrimination based on wealth which constitutes a denial of equal protection

[22] But see *supra.* at 21-26.

[23] See *Morris* v. *Schoonfield,* 399 U.S. 508, 509 (White, J., concurring). In fact, state judges have indicated that where any penalty will be imposed on the mothers, it will be a jail term. See Transcript of *Welfare Commissioner* v. *Robin Janes, supra.* at 27. (Appendix A).

of the law. Cf. *Tate* v. *Short,* 401 U.S. 318; *Williams* v. *Illinois, supra.; Frazier* v. *Jordan,* 457 F.2d 726 (CA 5) (Wisdom, J.).

III. INCARCERATION OF THE MOTHERS OF ILLEGITIMATE CHILDREN, PURSUANT TO CONNECTICUT STATUTE 52-440b, CONSTITUTES CRUEL, UNUSUAL AND DISPROPORTIONATE PUNISHMENT OF THESE CHILDREN IN VIOLATION OF THEIR RIGHTS UNDER THE EIGHTH AND FOURTEENTH AMENDMENTS.

A. THE COURT SHOULD LOOK BEYOND THE STATE'S ASSERTION THAT IT IS ONLY PUNISHING THE MOTHER BY THE ENFORCEMENT OF THIS STATUTE[24] CONNECTICUT IS PUNISHING THE CHILD.

As shown earlier, the incarceration of the mother will have its most drastic and harmful effects upon the psychological and emotional well-being of the child. *Supra.* at 13-21. And the child who will suffer in these circumstances has power to neither rebut the state's presumption that the statute works to his best interests nor to control his mother's behavior so as to prevent her incarceration. Where the greatest punishment falls on the child, the Court must look beyond the nominal designation of the mother as "defendant" to examine whether its potential impact on the child is consistent with the Eighth Amendment. See *Taylor* v. *Martin,* 330 F.Supp. 85, 89 (N.D. Cal.) *aff'd. sub nom, Carleson* v. *Taylor,* 404 U.S. 980; *Doe* v. *Harder,* 310 F.Supp. 302, 303 (D. Conn.), *appeal dismissed,* 399 U.S. 902.

[24] The amici in no way intend to derogate the plaintiffs' argument that they are unconstitutionally subjected to this statute because their right to remain silent is protected by the First, Fifth, Ninth and Fourteenth Amendments. Rather, we assert that even if the court rejects the plaintiffs' right to privacy in this matter, it must hold that punishment by incarceration is unconstitutional because it constitutes disproportionate and cruel punishment of children.

B. PUNISHMENT OF THE CHILD IS UNCONSTITUTIONAL IN THIS CASE BECAUSE (1) IT CONSTITUTES PUNISHMENT FOR THE "STATUS" OF BEING AN ILLEGITIMATE CHILD OF A WOMAN RECEIVING WELFARE ASSISTANCE; (2) THE CHILD'S CONDUCT IS NOT MORALLY BLAMEWORTHY; AND (3) A CIVIL CONTEMPT SANCTION, WHICH DOES NOT ALLOW THE CHILD CONTROL OVER HIS MOTHER'S RELEASE IS A DISPROPORTIONATE PUNISHMENT.

This Court has held that punishment may not be imposed, consistent with the Eighth Amendment, upon persons who have not committed any criminal act. *Robinson* v. *California,* 370 U.S. 661. *Cf. Powell* v. *Texas,* 392 U.S. 531.

Where the child has committed no criminal act but is deprived of his mother solely because he is the illegitimate child of a mother receiving public assistance, the child is being punished for the accident of his birth, a result not tolerable under the Eighth Amendment.

Further, the child, unlike the mother, has no control over the outcome of the disclosure proceeding or over the length of incarceration: He does not "carry the keys to [his] prison in [his] own pocket." *Doe* v. *Norton, supra.* at 83. It is that very element which has been held to be the necessary justification for punishment for civil contempt. *Shillitani* v. *United States,* 384 U.S. 364.

Second, the state may not constitutionally punish a person whose conduct is not morally blameworthy. *Morissette* v. *United States,* 342 U.S. 246. In the instant case, the child's conduct is morally blameless. Indeed, it is not considered at all. Nor can the mother's conduct be deemed conclusively blameworthy where Connecticut refuses to allow her to present any defenses for her refusal to disclose the father's name.

See *supra.* at 21-26. Indeed, her concern for her child's best interests may dictate her refusal to cooperate.

Finally, the punishment is disproportionate. In the state's view the child stands to benefit from the knowledge of his father's name and from future possible benefits which he may gain from the knowledge of his paternity. In contrast, where the child cannot benefit, because of the father's unavailability (*supra.* at 27-29), because of psychological reasons (*supra.* at 13-21) or because his mother refuses to disclose, the state has seen fit to deprive the child of the most substantial benefit he has—the right to remain with his mother, the only available caring parent. This extreme, harsh punishment far outweighs the seriousness of the mother's offense and it cannot be imposed. *Trop* v. *Dulles,* 356 U.S. 84; *Weems* v. *United States,* 217 U.S. 349.

CONCLUSION

Under the Connecticut statute only illegitimate children dependent on public assistance are threatened by the loss of their mothers. These children are poor and largly non-white.

The fundamental rights of the child in this class are violated by the statute which subjects him to removal from his sole caring parent and to the psychological and emotional harm which this removal may engender. For this class alone, the statute undermines established standards for the separation of natural families based both on knowledge and law, which require that the best interests of the child must in all cases be considered paramount. Such state action violates constitutional guarantees and requires the

most careful scrutiny by this Court since those who are most powerless are subject to the deprivation of their constitutional rights.

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APPENDIX

APPENDIX A

CIRCUIT COURT

1ST CIRCUIT, AT NORWALK

January 28, 1974

WELFARE COMMISSIONER

vs.

ELIZABETH STONE

BEFORE: HON. G. SARSFIELD FORD, Judge

APPEARANCES: ALLAN P. CRAMER, ESQ.
38 West State Street
Norwalk, Conn.

ROBERT GERLIN, ESQ.
Keeler Building
Wilton, Conn.

2 THE COURT: Welfare Commissioner versus Elizabeth Stone.

MR. CRAMER: Your Honor, I believe the defendant is here. We have asked her to name the punitive (sic) father in the situation.

THE COURT: You are here in behalf of the Commissioner?

MR. CRAMER: Correct, your Honor.

THE COURT: All right.

MR. GERLIN: Your Honor, we have a situation here, I think, where the law is hard. The law is very hard in a situation where it is deserving of compassion. Now, we have sought compassion from the Court before and we have received it and the matter was put off for a prolonged period while I was able to appeal to the Commissioner of Welfare. Frankly, I have done that. I have received communication from him and I was stressing sympathy. The Commissioner of Welfare is saying he has no discretion in this matter. Well, I tend to disagree. I think he does. However, if he says he doesn't wish to exercise it--

Now, I will very briefly go over the facts and explain to you where we are now.

The father of this child is a man who has been arrested for narcotics violations, for assault and battery, apparently has been diagnosed as a schizophrenic, and has not been in the State of Connecticut for two and a half to three years. He is a fugitive from Connecticut right now. He can do the State of Connecticut no good. Now, my client is terrified of this man. He has come here the last time he was in the area. It is a very serious situation. My client is organizing herself well. She works part time, does not have a job but has been working part time while the child goes to nursery school and acquires public assistance. She does not admit on the legal record this man is the father of the child. She doesn't want him to have a reason to come back.

Now, she tells me if the law insists she speak the name of this child's father that she will leave the Welfare roll.

THE COURT: She has that choice.

MR. GERLIN: I have tried to convince her because she requires the assistance to stay on Welfare and reveal the name of this man. She insists she will not do so. She won't even tell me who it is. I would like a short continuance of the matter for me to try to convince her to reveal the name of the father or to resign from the Welfare rolls.

MR. CRAMER: Your Honor, if I may comment. First of all I don't think she has the alternative.

THE COURT: Not now since she has accepted the Welfare.

MR. GERLIN: I am not arguing that point.

MR. CRAMER: So even if she does go off, I think she has a clear obligation to reveal the name.

THE COURT: Well, a preliminary finding must be made.

MR. CRAMER: May I speak, your Honor?

THE COURT: Yes.

MR. CRAMER: I think the problem here which I certainly, you know, personally feel compassion for, is possibly a bit greater than the defendant or her attorney think it is, or I

should say, it is a lesser problem than they think it is. My understanding is if this is true, nothing would be done. Obviously, if they don't know where he is, there wouldn't be any objection. Obviously, we can't control when he will show up. But there has been no cooperation here and cooperation is really the purpose of the legislature enactment.

I woud just add, we can't control when he might show up but if he did, the Welfare Department at that point would like to—

MR. GERLIN: The man is a fugitive. I believe frankly, this a problem. I believe the Court should have discretion to examine. It does not under the Statute. I believe the Statute should be read so the Court does have discretion. The law, I think is hard.

THE COURT: It may even be harsh. I assume by reason of this citation which places Elizabeth Stone before the Court that the underlying factors have been met. There is a child born which is living with her and is the recipient of Welfare assistance.

MR. CRAMER: No objection to that, is there?

MR. GERLIN: That is correct.

THE COURT: And to date Elizabeth Stone has failed to voluntarily disclose the name of the punitive father.

MR. GERLIN: Correct.

THE COURT: Then under the Statute, number one, I have to deny your request and number two, under the Statute, I will order that she disclose the name of the punitive father.

MR. GERLIN: We can't have a week, your Honor, for her to resign the Welfare rolls and perhaps the State in its wisdom would leave her alone if she did do that?

THE COURT: I don't know if it would make any difference.

MR. CRAMER: I can assure you it won't.

THE COURT: She was a recipient already. She chose assistance at the time the aid was sought, as I would see it and you are presumed to know the law.

MR. GERLIN: The law has changed. I believe it was attacked constitutionally. It has been amended.

THE COURT: Probably. It could very well be true but I am powerless to do anything. I have compassion for her too, but I can't let that shade my obligation to my oath to do what this law says I should do. The legislature is the place to attack it, not here. As far as I see it.

MR. GERLIN: And if Elizabeth refuses she is in contempt?

THE COURT: She would be, I assume.

MR. GERLIN: I would very much like—I think the situation is so serious, I think that we should have some time to consider what she is to do about the situation. She has a child. She might even go to jail if she refuses to speak.

THE COURT: Well, that will come up when she refuses to speak.

MR. GERLIN: Are you going to require her presence on the stand today or—

MR. CRAMER: If your Honor please, if it would make any difference to Counsel or be of any assistance to them, I have the necessary forms acknowledging paternity if they wished nothing be put on the court record at this time. It could be done that way in the alternative.

THE COURT: If you want to accept Counselor's offer it is perfectly all right with me. The alternative is, I would ask the young lady to disclose the name right here and now.

MR. GERLIN: May we have a short recess?

THE COURT: I am going to take up another matter and you may discuss it with your client but be assured that I will follow the law.

MR. GERLIN: Yes, your Honor.

(Recessed and then resumed.)

MR. GERLIN: Your Honor, my client tells me that when she went on Welfare she was asked for the name of the father and she refused to provide it and they said, "Okay,

you don't have to give it." A couple of times after than they again requested the name and then said, "Okay, you don't have to." Now she brings up the point, the law was changed. I guess it was in 1971. Now she sees herself after they have been on Welfare and now they say, "You have to tell." or as Mr. Cramer suggests, pay back the money. Of course, that is ridiculous. She has a three year old infant child.

If in fact the Welfare Department did upon that number of occasions, your Honor, tell her she did not have to tell and now comes and tells her you must tell, it must seem—there must be an estoppel why she—why they would mislead her to detriment of rights. Now they are lowering the boom on what is, in fact, a defenseless person, that is a poor one. And, I think maybe we should—

THE COURT: Multiply that a thousand times. Where are we? There are a thousand girls in the same situation.

MR. GERLIN: Are they terrified of the father or are they trying to cheat the State of Connecticut?

THE COURT: How can we test the mental attitude?

MR. GERLIN: We can talk to the applicant and question her.

THE COURT: I am not allowed to. The law is clear. I have indicated to you, I have directed your client to disclose the name.

MR. GERLIN: Now, I wonder what the rights of appeal are in this matter because I think there may be a question as to whether the State has estopped itself from exercising its right.

THE COURT: You are looking to me for advice?

MR. GERLIN: No, I am not.

THE COURT: I have directed you to disclose the name. I am asking you to direct that inquiry to your client and report to us forthwith.

MR. GERLIN: I have spoken to her quite extensively and I find no alternative but to say she declines to provide that

information and I take exception to the State's insistence on that information on the grounds the State is estopped from asserting its rights to have misled her a number of times in accepting welfare while not revealing the name of the punitive father.

THE COURT: All right. I accept her declining to identify the punitive father. I will continue the matter until next Monday at two o'clock. I would ask she concern herself with her position and to be back here at two o'clock next Monday. I find her refusal, through you, is an act of contempt at this time. Rather than place her in custody at this time, I will give her until next Monday at two o'clock to purge herself from contempt. If she does not do it by next Monday at two o'clock, I will take it up.

MR. GERLIN: Thank you, your Honor.

THE COURT: I would suggest she get everything in order by next Monday if she is going to be continuing in this position and I have to restrain her, that someone is able to take care of her child and so forth.

MR. GERLIN: And if there is no one?

THE COURT: Then that will be her problem.

MR. GERLIN: Thank you, your Honor.

(Adjourned.)

THE COURT: State of Connecticut and Elizabeth Stone.

MR. CRAMER: Your Honor, I just received a memoranda of law in this matter so if I don't have a memoranda today to respond it is only because I wasn't aware there would be one to respond to.

MR. GERLIN: Well, I told the secretary on Friday there was a time period and I finished it this morning. Your Honor—

THE COURT: Yes?

MR. GERLIN: Part of our appeal to you today, your Honor, is for a stay on the basis that the case of Doe v.

Norton, the 3rd District Court case is presently on appeal to the Supreme Court of the United States on the constitutional issues. Today I have with me Frank Cochran of the Connecticut Civil Liberties Union who is counselor for the plaintiff or the appellant in the class action that is now before the Supreme Court of the United States. He will be available if we have any questions on that case, its present status of any of the constitutional issues raised here. He will be glad to help us.

My client is here. We are prepared to take testimony on any points that you want us to take testimony on or I can run through the papers now and point out to you what each point that we are raising is or discuss it with you if you would like, however you care to proceed.

Now, I will be very frank with your Honor. When last her I didn't envision getting into the position where we had to in effect, fully litigate this matter because I felt that since my client is attempting a desire to work and become self-supporting and plans to go off the child assistance, the matter would become moot. However, last week you ordered her to speak the name of the father of the child and Counsel indicated that the State's position would probably be that they might want to go after him for past payment irrespective of whether or not she has left or still is receiving assistance. I felt it necessary to protect her interests which I believe are very deep and very important that we had to prepare a full case on the matter including a memoranda of law and motions to dismiss.

MR. CRAMER: Your Honor, I don't think I have read the memoranda of law and I don't think anything raised in it his Honor is not aware of. I think it is important to keep in mind that the Federal Court for the District of Connecticut has clearly decided there is no right in this situation and the majority so ruled. I believe, Mr. Gerlin, is relying on concurring opinion by Judge Newman which I believe was Judge Newman's opinion only and I still

don't think there is anything in here in Judge Newman's opinion which gives any support here.

Also, Judge Henebry's decision, attached to the memoranda of law, as I read it has absolutely no relevance here. It is a totally different situation where a person in fact, the basis of Judge Henebry's decision was in fact the State was not supporting the child, in fact the voluntary payment made by the husband in this situation and the payment going to the mother, in fact for the mother and not the child and therefore, the Statute did not apply. So, I don't really see anything here which gives Mr. Gerlin anything to contest this claim.

I must say that it would seem that under the circumstances cited here, this claim could be very prevalent. I don't think any mother in a situation like this wishes to reveal the name of the father. On the other hand, there are interests in the State that have been a legal enactment with this court, as I see it, is bound to follow and under the circumstances Miss Stone is forced to follow that legislative enactment and her argument if it is an argument, should not be with this court which is bound to be with legislative enactment and I would respectfully ask you—

5 THE COURT: I took an oath to enforce the law. Now, we are here under 52-440b. I want to know whether you have any feeling that this, at this present point in time is [e]ffective in any way at all?

MR. CRAMER: No, I don't your Honor.

THE COURT: Can you tell me why you feel that you are on solid ground to move as you have?

MR. GERLIN: Well, I will respond to Counselor's points first.

THE COURT: No, respond to mine first.

MR. GERLIN: Judge Henebry's and the District Courts both say you have discretion to exercise of what this Statute calls for. Therefore, you can hear or are empowered to hear testimony or to take testimony on the questions that are raised with respect to the rights of

privacy, the constitutional right to privacy that this mother has with respect to her child's rearing and her sexual life. Judge Henebry makes that very clear in his opinion as to the majority in footnote fourteen, not just in the concurring opinions, and I have quoted from that on page three of my memorandum. It states, both opinions state, that what must be weighed are the interests of the state against the interest of privacy of the mother and child. Here we have told the Court and we are prepared to support it, we have supported with and are prepared with testi-

6 mony that the punitive father has not been seen in two and one half years that this man is a drug addict, a thief, and a schizophrenic.

Also we show your Honor that the Statutes of Limitations well may have run on bringing a paternity action.

THE COURT: That may be but is that effective against the order of this Court asking her to disclose the name and failure to do so in turn because this Court had to find her in contempt?

MR. GERLIN: Yes, your Honor, because you are empowered to listen to what she has to say, listen to what Counsel has to say and to determine whether or not the sanction or the discretion of the Statute and if she refuses to obey the directions under the Statute whether the sanctions provided under the Statute should be applied in this case. You are empowered to do that. Now, we raise other issues. We raise constitutional issues. They are all on appeal to the Supreme Court. I can say she has resigned from Welfare and is no longer receiving payment. Therefore, the State can no further be damaged if it has been in any way by either staying or certainly not by dismissing it because if she was out of the State, the Statute—

7 THE COURT: All I have is a memoranda for a motion to dismiss. Is there a motion?

MR. GERLIN: I filed it on Friday.

THE COURT: Then I should have it, shouldn't I?

MR. GERLIN: Yes, there is also an affidavit with the motion.

MR. CRAMER: Your Honor, if I may quote just briefly from Judge Blumenfield's decision on privacy, as Counsel has indicated, and in fact in the majority opinion, I believe that Judge Blumenfield's comments were as follows, there was a claim, apparently made that there was invasion of privacy, forcing a wife to testify against her husband. The relationship which these unwed mothers seek to protect from disclosure is emphatically different. There is no privilege to withhold testimony of a parent. I think Judge Blumenfield clearly disposed of it and I think your Honor, the case has been stated. I feel, under the circumstances, and fortunately I think this case has got to be differentiated from Judge Henebry's decision where your Honor, it doesn't rise or fall at all on anything. I think your Honor can recognize there is a reluctance to testify for fear of action by the punitive father.

8 THE COURT: I will rule on it today. I haven't had an opportunity to read this, of course you just gave me the memoranda and I haven't read them so I will take a short reces and I am going to read these. When I read them I am going to come out and I will have your client who I already have in contempt, take the stand and I will inquire of her myself.

MR. GERLIN: As I recall you ordered her to return today and speak but that you have not held her in contempt.

THE COURT: I clearly found her in contempt last week. I said I made a finding that she was in contempt and I will give you until two o'clock next Monday to purge herself but I would like to inquire of her myself.

MR. GERLIN: There is another possible suggestion.

THE COURT: No, this is what I am going to do so we will pass it for now and I will take it up later and I would like to read this and come back and I will move from that point.

MR. GERLIN: Fine.

(Passed and then resumed.)

THE COURT: This case is pending in the Supreme Court of the United States.

MR. COCHRAN: The appeal was documented in January, I believe it was January 4th. No action to my knowl-

9 edge has been taken on it to date. The jurisdictional statement has been submitted. The Court has neither noted probable jurisdiction nor made any other rulings on the case.

THE COURT: I have read your motion and I have read the memoranda. I deny the motion to dismiss and I deny the request for stay.

Now, to inquire of you—

MR. GERLIN: Your Honor, excuse me, has she been put under oath?

THE COURT: I am going to tell her why and when I finish we will have her sworn and I will take it from there.

I am going to inquire of you what your situation is, what you have done, what you are trying to do, and I will advise you that you have to— The Statute requires you to answer the Court. That is different than answering everybody else because I have a power to hold you in contempt. If I am not satisfied with the way the matter is developing I can, by your merely asking, or the failure to answer, I can have you remanded into custody and stay here at my wish until I see fit to release you with a term not exceeding a year. Okay? I will ask the clerk to put you under oath and I am going to ask you what the background of

10 this matter is. Okay? Not only with respect to the name of the punitive father but to any other matters that I may inquire.

MR. GERLIN: We will be entitled to inquire as well?

THE COURT: I don't know what reason you would have.

MR. GERLIN: We would like to make a factual record if we may.

THE COURT: I would suggest that you see what develops then we will take it up at that time. As I said to you, I

have read your memoranda, read the motion and I will take it from there, rule on itand take it from there.

11 **Elizabeth Stone** having been duly sworn was examined and testified as folows:

BY THE COURT:

Q. Miss Stone, at one time or another, were you inquired of by the Welfare Departmen as to the parentage of your offspring? A. Yes.

Q. How long ago was that? A. The first time they asked me was when I applied and I refused to do it and they told me I was not required to.

Q. Who told you that? A. The Welfare Department.

Q. Who in particular? A. Idon't know, one of the social workers at the office.

Q. This was at the time you applied for assistance? A. Before I went on Welfare.

Q. Were you afforded assisance at the time? A. After my daughter was born. I wasonly eligible until her birth.

Q. And you were both eligibe after the birth? A. After the birth but I applied before she was born.

Q. Your daughter was born and then thereafter were you again inquired of by the Welfare Department as to the father of the child? A. Yes.

Q. And when was that? A.I don't know exactly but I believe it was once a year or a couple of times and
12 again they told me I did not have to name the father.

Q. Who told you that? A. Social workers.

Q. Do you know who they were? A. I don't know off hand but I do have a record,papers that they sent me. They have a person who reviews my case.

MR. GERLIN: May it please the Court, could the witness raise her voice?

THE COURT: They would liketo hear you.

Q. So, that you indicated at least three times someone in the Welfare Department told you there was no need for you to disclose the name of the punitive father? A. Yes.

Q. What is your age? A. Twenty-four.

Q. What? A. Twenty-four.

Q. And how old is your child? A. Three and a half.

Q. And where is the father of your child? A. I don't know.

Q. When is the last time you saw him? A. Just before her first birthday which was about two years ago.

Q. Where did you see him? A. He was at my house.

Q. And you haven't seen him since then? A. No, I haven't.

13 Q. Do you know where he is? A. No, I don't.

Q. Do you have any indication? A. I have heard rumors but nothing legitimate.

Q. What is you background? A. My background?

Q. What is your education? A. I completed Wilton High School I haven't gone to college but I have been a ballet dancer since I was seven years old and—

Q. Are you employed? A. Not at the moment but I am seeking employment.

Q. When is the last time you were employed? A. About three years ago.

Q. Where do you live? A. Right now in Norwalk, 27 Rambler Avenue.

Q. Who do you live with? A. My girlfriend.

Q. Do you have a family? A. Yes, I do.

Q. Mother and father? A. Yes.

Q. Where do they live? A. Norwalk.

Q. Did they assist you? A. If I am broke they would give me a few dollars but nothing regular.

Q. Are you indebted to the Welfare Department? Do they have an account in your name which is for you personally? A. Do you mean—

Q. Have you, yourself, received benefits from the
14 Welfare Department? A. For my daughter.

Q. The answer to you is negative? To you, you have never received anything? A. I guess so, yes.

Q. And your daughter, I notice from the papers issued to the attorney, you have resigned? A. Yes.

Q. You indicate that you have resigned from Welfare benefits? A. Right.

Q. And you did that as of February 1? A. Yes.

Q. How much were you receiving? A. Two hundred and four something a month.

Q. And how long have you been receiving that? A. Since my daughter was born, 1970.

Q. You haven't seen the father of your child in three years? You have no idea of his whereabouts? A. No.

Q. Will you tell me how, with that fact in your mind, how it concerns you at this time? A. Because he has family here. I believe that if he had any excuse to come back here he would come back and this would be a good excuse for him to come back. It has taken me seven or eight years to get him out of my life, out of my mind and to set myself straight and it is appalling to me to have the thought of him coming back into my life.

Q. Well, that is a conclusion on your part, I want to know why? I want to know why? He has not returned here in three years and he has everything else that
15 you have in your mind except for this fact that you have not told me his name and you haven't seen him in over three years.

I am concerned about it because it is a mandate of legislature for me to act and I have a right to act. As I told you last week I am going to. Now, you have to show me some justification for me to not to. In three year the same set of facts existed in your mind and have been true. He doesn't know whether or not you have disclosed the name of his—his name to anybody during the course of that time. And, his family ties were here and yet he has not seen fit to bother you, communicate with you in any way. What I would like to know is what makes you think, not just what

emotionally affects you, that there would be a change toward you if you were to comply with the Statute and tell me two words? A. Well, because—

Q. Which may never go any further than this? A. It might.

Q. We have any indication by the State, if what you said is true and it's verifiable which they are entitled to, they probably would not proceed. A. But then again they might.

Q. Well, I don't know. It is speculation. If you are telling me the truth, I have no reason to believe you are not, then what they would determine is exactly what you have been saying and if they said to you that is the end of the matter, then I would assume you are in good faith. A. They also told me I wouldn't have to give his name. Now I am in court.

16 Q. I have a Statute that says that you have to do this. Now, you are telling me on occasions this happened but you are not telling me who. You have a copy of a letter from a woman but you have to be more specific. They may be unauthorized to say that.

MR. GERLIN: Your Honor, may I speak?

THE COURT: No.

THE WITNESS: The type of person that he is, and I feel knowing him for eight years can sort of qualify me to speak on how he is. He is a schizophrenic personality. He will be one way for a certain amount of time and you have him figured out and you can react to his emotions and then he will turn around and do something completely opposite so that there is no guidance by him. You can't tell how to act. He has been violent with me. He has threatened me with a knife and in a public area and he is a drug user, which you are familiar with. It has taken me so long to get away from this type of life, this type of person, and to set myself up straight with my daughter that I don't know how else to put it into words. To sink back into that situation again is something that I don't know how to handle and by my refusing to give his name is keeping my head

above it. I am not trying to gyp the State out of anything that is coming to them. I don't like being on Welfare
17 anyway but it was something I felt was necessary in order to take care of my daughter the best way I could.

Q. There is no shame of being on Welfare. Listen, you yourself were not, your daughter was? A. My daughter.

Q. And I forget whether you responded and, if you did, what your answer was about the last time you worked? A. The actual last job I wasn't being paid for but I was getting experience as a bartender.

Q. How long ago? A. Six months or so but it wasn't actually a job. Before that I was working while I was pregnant. I was working.

Q. That was three and a half years ago? I want to know what you have been doing for the last six months? A. Raising my daughter.

Q. You have been going only on the allotment that your daughter has? A. Yes.

Q. Taking care of you, too? A. Yes.

MR. GERLIN: Your Honor, if I might, I can see you are puzzled on this.

THE COURT: I haven't asked my last question yet.

MR. GERLIN: All right.

Q. When is the last time you were asked to disclose your child's father name? A. Before these proceedings?
18 Q. Yes. A. It was the last review that I had and I think it was at least six weeks ago.

Q. No, I will ask you to disclose to me, under oath you understand that, and I will ask you to disclose to me the name of the father of your child? A. And if I refuse?

Q. If you refuse to do so you have a number of things that will happen. The best that can happen is nothing. The worst that can happen is you will be incarcerated. You can be fined. That's about it. That is your decision. A. I am not sure. I guess what I am supposed to do is if I refuse, is taking my chances. Is that what you are saying?

Q. No, you can be confined not exceeding a year and you can be fined—[t]hat is up to me. I told you last week what it would be. I gave you a week to think about it, that the situation was to purge yourself if you liked. Now, I have listened to those comments that you made. I wanted to hear them myself. A. Okay, if it is a point of going to jail, naturally I am going to tell you. I don't know if there is anything more that my lawyer has to say before we make a final decision. Can I have a minute to speak to him?

Q. No. I have an obligation to follow the Statute. It is hard but I have an obligation. It is not easy sitting up here. I have asked you under the Statute to tell me and either you tell me his name or you can remain mute and say you are never going to say it and that is up to you.

MR. GERLIN: I think I take exception to you
19 asking that question at this point on the grounds that if the testimony is her uncontradicted testimony and is accurate, there is no reason for the State to know the name of this man.

THE COURT: I don't know that but you may have an exception to my asking her that. May we ask if the State has had any evidence bearing on her credibility to produce, bearing on the witnesses credibility?

MR. CRAMER: No, I have no evidence.

THE COURT: The credibility, the problem as I see it, doesn't go to her problems as to what the father of her child is like. The problem I have is that she is here in front of me and as a judge of the Circuit Court and she is to disclose to me and if she doesn't that is contemptuous to me, to the Court. That is where I have to take action.

MR. GERLIN: Assuming the other circumstances of law—

THE COURT: There are other issues I will take into effect when she fails to answer or she answers.

MR. GERLIN: As I read Judge Henebry's decision—

THE COURT: I am not concerned with his decision. I am concerned with what I have to do. I am not unmeaningful of that decision. I am unmeaningful that she is going to

answer or is not. Depending on what she does I will have to take any action. It is very clear to me in my mind. I will try to be very fair. But, I am spending a little more time than I should on this. This girl can answer or she will tell me that she is not. All right?

MR. GERLIN: When you have completed your examination, may I ask a couple of questions?

THE COURT: I have completed. I have asked her to disclose the name. If she does, she will do so soon or she will tell me she is not going to do it.

MR. GERLIN: May I inquire of her now before she is required—

MR. CRAMER: I object to any further questioning. The issue has been totally framed.

THE COURT: This is the problem. I can appreciate your problem. I can appreciate this. But, the answer to your problem is in the legislature as far as I can see it.

MR. GERLIN: As to our point on the Statute of Limitations having run on paternity actions—

THE COURT: She has already indicated he is out of the state. She returned home to have the baby.

MR. GERLIN: In so far as she is concerned he is out of the state.

THE COURT: That is his burden. That is the problem of the state in the next action. I cannot be guided by it in this action. That is my reading of the Statute and I don't think there is much to quarrel with.

MR. GERLIN: I only have a couple of questions to ask for the record.

THE COURT: I have asked the name and I have asked her to tell me. Either she tells me or she is not. If she tells me, depending on her answer and if you then want to ask, which, I believe go to the merits of what I do, I have no qualms and I think all your questioning and argument has to do with how I exert my discretion.

It is up to you.

THE WITNESS: May I ask you a question? If I refuse at this time to give the name, can I reverse that action at any time?

THE COURT: Well, if you refuse and I confine you, you will stay there until you purge yourself. That will be at any time you care to make delivery of that name. You will purge yourself from contempt and I will release you. You are asking me that and in so doing you get an impression as to what my ultimate judgment may be. That is one way. You can't refuse to tell me and ask me to come back tomorrow because I gave you a week to do that. I gave your Counsel a week to consider it with you and you are here.

MR. COCHRAN: May I be heard?

THE COURT: I would like to but it is just one more issue as to whether your appearance is in the file and whether you are involved in it. At this point it is not. I don't want to be unfair but he is doing a fine job.

MR. GERLIN: I would like to take exception to your refusal to let me question the defendant prior to your asking her the question.

THE COURT: You may have an exception.

THE WITNESS: Well, I don't want to go to jail so I guess there is only one thing left for me to do. Do I have to say it right here?

THE COURT: You have to tell me.

THE WITNESS: Wayne Murray.

THE COURT: I will convey it to the State and I think that will probably be the end of it.

MR. CRAMER: Your Honor, might I inquire for some further information? First, I did not hear the name.

THE COURT: I will convey it to you as she has been brought here, as I read the Statute, to disclose it to me.

MR. CRAMER: I hope, your Honor, the court reporter was able to hear it. I need a transcript of this.

THE COURT: Well, I don't think you do. All you need is the name. I will give you the name. I don't know of any necessity to give it publicly.

MR. CRAMER: I wonder if I might inquire or his Honor might inquire as to the family situation here, are they in Norwalk? So, in the event there does have to be an attempt to locate him we are familiar—

THE COURT: I have to be fair to everybody and I am trying my darndest and the Statute merely says that before the Judge of the Circuit Court you are compelled to disclose the name of the punitive father under oath.

MR. CRAMER: Your Honor, the only reason I would ask is that, obviously, it would only be for the purpose of being sure the person the State pursued is the correct person by that name.

THE COURT: Okay. Do you have anything further that you want to ask this young lady?

MR. GERLIN: Are you going to let Counsel inquire?

THE COURT: No, I don't think there is any question. The Statute told me to ask the name. She gave me the name. I will give it to you people. You will then, under the Statute, she must cooperate in the institution of a paternity action if you deem it necessary.

MR. CRAMER: Correct, your Honor.

THE COURT: I think you have made it crystal clear last week, if what this young lady was saying was true, and if it was verifiable, and it couldn't be done until you knew who it was, the State would probably realize the futility of trying to find or collect anything from him.

MR. CRAMER: But I am going on the basis of testimony she has made in the court to the effect the family is living in the town.

THE COURT: What family?

MR. CRAMER: His family.

THE COURT: She didn't say that.

MR. CRAMER: Yes, she did. May it please the court.

THE COURT: In Norwalk or her town?

MR. CRAMER: She indicated Norwalk in her testimony.

THE COURT: Are these people involved in this case? The disclosure for the record was Wayne Murray. That is the

end of my inquiry as far as I am concerned. Do you have any feelings in regard to that? That is the end of my inquiry.

MR. GERLIN: We have further questions and we would object to Counsel inquiring further into this matter. I believe the Statute has been fully met and that he not inquire further here.

THE COURT: I would tend to agree. I, too, agree and I will tell you why. Because, as I view the problem here, it is my hope that this young lady won't have any further concern with what she has conjured up, and I don't mean to say she made it up. She may have good reason to think he could cause her difficulty but I have in no way determined whether or not that was true.

Now, you have it in this file and of course, on record, signed by this girl, and if there is an arrest record and now that you know who it is—I would have no difficulty in locating and identifying that person within an hour based on the affidavit. If he was convicted in our court system and given a conditional release or was in a drug program home —You can find out these things. It would be a lot easier, I know, if she would very quietly and cooperatively tell you this but as to whether or not you have a right to inquire of her in respect to that facet of the case in open court I would sustain the objection of the young lady's counsel.

MR. CRAMER: Thank you for your patience.

CIRCUIT COURT

SIXTEENTH CIRCUIT

WEST HARTFORD

November 27, 1973

PATERNITY PETITION

CV-16-7311-13598

STATE OF CONNECTICUT

VS.

ROBIN JANES

BEFORE: Honorable Henry J. Goldberg, Judge

APPEARANCES: Richard H. Alden, Esq., For the Welfare Department

THE COURT: Any other case I haven't called?

MR. ALDEN: You called us and I was out in the hall. This is the matter of the State Welfare Commissioner and Robin Janes. It's one of these petitions to——

THE COURT: That's the last thing on the list, I believe. Oh, the paternity division.

MR. ALDEN: Yes.

THE COURT: All right. It had previously been marked off, it's ready.

MR. ALDEN: She is here. I can put her on the stand I suppose. The reason that she has told me she didn't want to give the name is because she is under physical threat.

THE COURT: She is what?

MR. ALDEN: She is under physical threat.

Robin Janes having been duly sworn was examined and testified as follows:

BY THE CLERK:

Q. State your name and address. A. Robin Janes, 85 Dyer Avenue, Collinsville, Connecticut.

THE COURT: May I ask how old are you?

THE WITNESS: Eighteen.

THE COURT: All right.

DIRECT EXAMINATION BY MR. ALDEN:

Q. Miss Janes, are you the mother of a child born out of wedlock on May 26? A. Yes.

Q. And, is that child on welfare? A. Yes.

Q. State of Connecticut? A. Yes.

Q. Receiving support from the State of Connecticut. And, have you been asked to disclose the name of the father of that child by the Welfare Department? A. Yes.

Q. And have you refused to do so? A. Yes.

Q. And, do you want to tell your Honor why you refused to do so? A. He's threatened my life and my daughter's life. He's threatened me physically with his own hands and he has come after me with a gun and he has been on drugs charges and he's also threatened my daughter's life with a gun and I feel that it's just a danger to me and my daughter's life to state his name.

THE COURT: What section is that?

MR. ALDEN: That's Section 52-440b. 52-440b General Statute 1971, your Honor.

THE COURT: Do you have that statute available?

MR. ALDEN: I could let you—This is from the Welfare Department, down at the bottom, 52-440b.

THE COURT: Well, what are you requesting of the court?

MR. ALDEN: Well, this is—I just learned of this particular problem about fifteen minutes ago for the first time.

THE COURT: What is that?

MR. ALDEN: I just learned of this problem that she has fifteen minutes ago. I don't have any contact at this point with somebody in the Welfare Department that can make a decision whether they want to withdraw this thing or go forward, this is the problem I had. We are required to cite them in here.

THE COURT: What is your name, again, please.

THE WITNESS: Robin Janes.

THE COURT: I simply want to tell you that we have a statute which in essence states that the mother of a child, your situation, born out of wedlock may be cited in court to appear before a judge and to disclose the paternity, to disclose who the father is and if that person refuses to disclose the putative father, that person may be found in contempt of court and the court could fine you as much as $200.00 or imprison you in jail for a year or both. So, you see, young lady, we are in a pretty serious situation.

THE WITNESS: Well, you know, I'm afraid of him and I'm going to be getting married in the Spring and my fiancee is going to be adopting my daughter and I think it would be harmful to state his name right now because of I'm afraid of him. I'm afraid he's going to disturb everything for my future this Spring. My fiance is going to school now and he will be graduating pretty soon.

THE COURT: The statute doesn't say that she shall
6 be found in contempt, it simply states that she may be found in contempt.

MR. ALDEN: One suggestion, if she is going to be married and if some other man is going to adopt this child——

THE COURT: That would resolve—

MR. ALDEN: This would resolve it. Of course this man has no obligation to support this child at this time until he adopts him but once she is off, once the child is off welfare of course that takes care of this whole problem and I don't know whether that is a possible solution for her.

THE COURT: Where do you live right now? Who do you live with?

THE WITNESS: My fiance, right now.

THE COURT: When did you expect to be married?

THE WITNESS: This Spring.

THE COURT: The Spring?

THE WITNESS: Yes.

THE COURT: We have quite a few months to go.

THE WITNESS: He will be graduating in a month and then he has to go for—

THE COURT: He is graduating from where?

7 THE WITNESS: C.P.I., Computer Processing Institute.

THE COURT: Well, Counsel, I'll consider any suggestion that you have.

MR. ALDEN: I'm thinking. Your Honor, could this matter be continued to some time so that we could make, maybe check into it a little bit more so that we could see if we could work out an arrangement with her. The department learned today of this problem, maybe we could work out something to be satisfactory for both parties, if it would be continued.

THE COURT: Well, all right. I just simply want to straighten one thing out. I think the statute speaks of may be found in contempt rather than shall. But the statute does give the court the authority to compel you to name the fath.. and if you still refuse, the court here wouldn't have any alternative except to fine you up to $200.00 and imprison you for not more than one year or both. Now, you are requesting to have this continued?

MR. ALDEN: Yes, your Honor. I think that maybe something can be worked out.

8 THE COURT: Well, how much time has elapsed? We are not going to run into the statute of limitations?

MR. ALDEN: No, this child was born last May so a year hasn't even elapsed. We do have time.

THE COURT: All right. We'll continue this matter in other words, it may go off now and if you want to reclaim it again you can reclaim it.

MR. ALDEN: Why don't we have it go off, then.

THE COURT: You understand the matter is just simply going off at this time and subject to being brought up again to allow the state to work out something with you. All right.

MR. ALDEN: Thank you, your Honor.

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CIRCUIT CORT

NINTH CIRCIT

MIDDLETOWN, ONN.

ORDER TO SHOWCAUSE

NICHOLAS NORTON, Welfae Commissioner
State of Connecticut

BEFORE:

The Honorable Nicholas F. Amentano, Judge
The Honorable Henry J. Goloerg, Judge
The Honorable Eli L. CramerJudge
The Honorable Daniel F. Spaone, Judge

APPEARANCES:

For the Plaintiff:

John J. Carta, Jr., Esqure
547 Main Street
Middletown, Connecticut

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APRIL 2, 1973. By: The HonorablNicholas F. Armentano, Judge.

MAY 7, 1973. By: The Honorable Enry J. Goldberg, Judge.

OCTOBER 2, 1973. By: TheHonorable Eli L. Cramer, Judge.

DECEMBER 31, 1973. By The Honorable Daniel F. Spallone, Judge.

2 April 2, 1973, Middletown, Conn.

Before: The Honorable Nicholas F. Armentano, Judge.

THE CLERK: At this time we have those show cause orders.

THE COURT: Maria Harcega.

THE CLERK: Will you identify yourself for the record?

MR. CARTA: Attorney John J. Carta, Jr. I think you called Harcega.

THE COURT: Yes. You represent the commissioner?

MR. CARTA: Representing the Commissioner of Welfare.

THE COURT: Are you represented by counsel?

THE DEFENDANT: No.

THE COURT: You may proceed.

MR. CARTA: Basically, your Honor, I think the Statute 52-440b provides that whenever a child is born out of wedlock to a mother and that child then receives public assistance from the State of Connecticut the mother is compelled to identify the father of the child. And Maria Harcega here the respondent in this case, I guess, was requested by
3 the State Welfare Department in New Britain and refused and still continues to refuse to disclose the identity of the father of the child. That is the reason for the citation this afternoon.

THE COURT: Do you wish to put on any evidence?

MR. CARTA: Yes. The only evidence is Mrs. Harcega.

THE COURT: Are you willing to disclose the name of the father?

THE DEFENDANT: Sure.

MARIA HARCEGA, 42 Farmington Avenue, New Britain, Connecticut, called as a witness, being duly sworn by the clerk, testified as follows:

BY THE COURT:

First of all, the child's name is Sire Harcega, born February 16, 1972? A. Yes.

Q. And the child is receiving State aid? A. Yes.

Q. And you are willing to name the putative father of the child? A. Yes.

Q. You do so voluntarily? A. Yes.

Q. What is the name of the father? A. David Negri.

Q. Where does he reside? A. He lives in New Britain, Connecticut.

Q. What street? A. 198 Elm Street, New Britain.

Q. How old a man is he, about? A. He is twenty-five.

THE COURT: Any questions?

MR. CARTA: I have no further questions.

THE COURT: You may step down.

(Whereupon, the witness was excused and the matter was concluded.)

Ann Abascal

April 2, 1973, Middletown, Conn.

THE COURT: Ann Abascal, how old are you?

THE DEFENDANT: Twenty-five.

THE COURT: Is this lady willing to disclose the name of the father?

MR. MURPHY: Your Honor, as you probably know there is currently pending in the Federal Court an action on Section 52-440b. In fact, today is the date of the hearing on the matter. I would respectfully ask this

Court to continue this matter pending the outcome of the case.

THE COURT: Is this the United States Court in Hartford?

MR. MURPHY: Yes, it is, and the issue of this case——

THE COURT: The only trouble is that their decision may not be binding on this court. I will continue it for a week or a short stay. I'll give you a short stay because we are not going to wait until that case goes to the Supreme Court of the United States. There are various district courts and may differ throughout the country on your decision. I found that on the Court of Appeals. They are not binding on my court unless I agree with it.

MR. MURPHY: I don't believe the State of Connecticut is going to be adversely affected by the continuance. The child is only eighteen months old and there is exactly a year and a half to [run] on the statute, the limitation to a paternity action. Your Honor, I would ask at least one month.

THE COURT: I will give you a month. But if that decision is unduly delayed, as I have said before, unless I agree with the decision it is not binding on me because it is a trial court level collection. What particular date?

THE CLERK: May 1st.

(Whereupon, the matter was continued to May 1st, 1973.)

Ann Abascal

May 7, 1973, Middletown, Conn.

MR. CARTA: Ann Abascal, your Honor, that may go off. That person is no longer receiving state aid.

THE COURT: May go off.

(Whereupon, the matter was concluded.)

Susan Bilodeau

April 2, 1973, Middletown, Conn.

MR. CARTA: Are you willing to disclose the name of the father?

THE DEFENDANT: No.

THE COURT: You are not?

THE DEFENDANT: No.

7 THE COURT: All right, take the witness stand.

SUSAN BILODEAU, 67 Collins Street, New Britain, Connecticut, being duly sworn by the clerk, testified as follows:

BY MR. CARTA:

Q. Miss Bilodeau, are you the mother of a child born on January 21, 1973? A. January 12.

Q. 1973? A. 1971.

BY THE COURT:

Q. Steven Bilobeau? A. Right.

Q. When was he born? A. January 12, 1971.

BY MR. CARTA:

Q. Have you had a child born this year, January of this year? A. No.

Q. That's your only child? A. Yes.

Q. Now, Miss Bilodeau, have you been on public assistance from the State of Connecticut? A. Yes.

8 Q. Are you presently on public assistance? A. I was supposed to get a check on the first of the month and I didn't because I'm working.

Q. When did you start working? A. Last Thursday.

Q. Have you been on public assistance in the past? A. Yes.

Q. Now, have you been as a result of the birth to you of this boy? A. Yes.

Q. Now, you reside at 67 Collins Street, New Britain? A. Yes.

Q. That is still your present address? A. Yes.

Q. Have you been questioned by the Welfare Department in New Britain concerning the father of the child? A. Yes.

Q. Will you tell his Honor the identity of the father of the child? A. No.

BY THE COURT:

Q. You will not? A. No.

Q. Do you know what the statute says? Anyone

9 who refuses to disclose the name of the father could be held in contempt of court and could be fined not more than $200 and imprisoned not more than one year or both. Do you understand that? A. Yes.

Q. And you still refuse? A. Yes.

Q. And the child is presently a recipient of the State Welfare? A. No.

Q. You didn't get one the first of this month. Was it ever terminated? Did you get the last check? A. No. You know I'm working. They found me a job and I was supposed to have the check on the thirty-first.

Q. Do I understand now that you are working this child is going off welfare? A. Yes.

THE COURT: Well, why don't you check that matter out, check whether this child is a recipient now. The statute says at the present is a recipient. You ought to amend your petition.

MR. CARTA: I think at the time I received notice—you just began working?

10 THE DEFENDANT: Yes.

THE COURT: Continue this also to May first. Check that because she would have a right to refuse even if the statute is constitutional if the child is not presently a recipient.

(Whereupon, the matter was continued to May 1, 1973.)

Cynthia Iverson

April 2, 1973, Middletown, Conn.

THE COURT: MISS IVERSON, are you willing to disclose the name of the father?

THE DEFENDANT: Yes.

THE CLERK: Take the stand, please.

CYNTHIA IVERSON, 53 South High Street, New Britain, Connecticut, being duly sworn by the clerk, testified as follows:

BY MR. CARTA:

Q. You have a daughter Stacy Ann Iverson? A. Yes.

Q. What is the date of her birth? A. July 4th, 1972.

11 Q. And is that child presently on public assistance? A. Yes.

Q. And do you know the identity of the father? A. Yes.

Q. Are you willing to disclose that identity? A. Yes.

Q. What is the identity of the father? A. His name?

Q. Name and address. A. Jack Rust.

BY THE COURT:

Q. R-U-S-T? A. I believe it is. I'm not too positive.

Q. Is his name Jack or John? A. I don't know. I have always called him Jack.

Q. Where does he reside? A. Stratford, Connecticut. I don't know the street.

Q. Do you know how old a man he is, about? A. Thirty or thirty-one.

Q. Do you know where he is employed? A. I believe he is a fireman.

Q. He is a fireman in the Town of Stratford? A. Right.

Q. Do you know what make of car he drives? We

12 want to get the right person, that is, the State does. It's not funny. There are several people known by

the same name. If you know, that is only as an aid so that the State can locate him. A. I don't know the make of the car; its a white car. That's all I know.

MR. CARTA: Thank you, your Honor.

THE COURT: You may step down.

(Whereupon, the witness was excused and the matter was concluded.)

Linda Dunphy

May 7, 1973, Middletown, Conn.

Before: The Honorable Henry J. Goldberg, Judge.

THE COURT: Show cause in the case of Linda Dunphy.

MR. CARTA: Attorney DeFrancisco from Meriden has apparently asked for a continuance and this, and I have no objection.

THE COURT: Any particular date?

MR. CARTA: I have no particular date, your Honor. I leave that up to the Court.

THE COURT: Suppose we continue this—I don't know what date it will be. You will hear from the clerk's office.

13 MR. CARTA: I have to check with the clerk on other matters anyway, your Honor.

Lisa Hall

May 7, 1973, Middletown, Conn.

THE COURT: Lisa Hall.

MR. CARTA: Your Honor, she called me this morning and said although she had arranged to be here somehow the arrangement fell through and asked for a continuance. She stated Wednesday would be all right for her at two o'clock.

THE COURT: May ninth at two o'clock.

(On May 9, 1973, the matter went off, settled.)

(Whereupon, the matter was concluded.)

Phyllis Clarke

May 7, 1973, Middletown, Conn.

PHYLLIS CLARKE, 141 Mansfield Avenue, New Britain, Connecticut, being duly sworn by the clerk, testified as follows:

BY MR. CARTA:

Q. Miss Clarke, did you on or about January 3rd
14 of this year, did you give birth to a child? A. Yes, I did.

Q. What is the name of the child? A. Tyrone Timothy.

Q. That is the date? A. Yes.

Q. Was the child born out of wedlock; are you married? A. No, separated.

Q. Are you and the child presently receiving state aid? A. Yes.

Q. Are you, Miss Clarke, willing to identify the father of that child? A. Yes.

Q. And could we have the name of the father of the child? A. Tyrone Howard.

Q. Tyrone? A. Yes.

Q. Howard? A. Yes.

Q. H-O-W-A-R-D? A. Yes.

Q. Do you have his address? A. No.

15 Q. Do you know? A. Springfield is all I know.

Q. Springfield, Mass? A. Yes.

Q. Do you know where he is employed? A. No.

Q. Or any other fact which might help the State in obtaining his address or finding him? A. I believe it's State Street. I believe that is the street he lives but I don't know where he works.

Q. You dont' know where he works? A. No.

MR. CARTA: I have no further questions, your Honor.

THE COURT: All right, you may step down.

(Whereupon, the matter was concluded.)

Noella Cote

May 7, 1973, Middletown, Conn.

MR. CARTA: Noella Cote, your Honor, that matter may go off. She called me and already identified the father.

THE COURT: That may go off.

(Whereupon, the matter was concluded.)

16 **Sharon Burr**

October 2, 1973, Middletown, Conn.

Before: The Honorable Eli L. Cramer, Judge.

THE COURT: The matter of Sharon Burr, 363 Main Street, Portland, Connecticut, this is an order to show cause under the provisions of Section 52-440b.

SHARON BURR, 363 Main Street, Portland, Connecticut, being duly sworn by the clerk, testified as follows:

BY MR. CARTA:

Q. Is that Miss Burr? A. Yes.

Q. Miss Burr, you are presently residing at 363 Main Street, Portland, Connecticut? A. Yes.

Q. And you were served with the order to show cause? A. Yes.

Q. Now, Miss Burr, did you on or about March 31, 1971, give birth to a daughter named Melisa? A. Yes.

Q. Are you able and willing to identify the father
16-A of that child? A. Yes.

Q. And could you please give me the name of the father of that child? A. Richard Coburn.

THE COURT: Spell it.

THE DEFENDANT: C-O-B-U-R-N.

THE COURT: His address.

THE DEFENDANT: It's New London.

THE COURT: You have no knowledge of the street?

THE DEFENDANT: No.

BY MR. CARTA:

Q. Could you please spell the last name? A. C-O-B-U-R-N.

Q. You say the address, as far as you know, is New London? A. New London, Connecticut.

THE COURT: You have no further questions?

MR. CARTA: I have no further questions.

THE COURT: Do you have any questions, Mr. Miller?

MR. MILLER: Your Honor, we originally had objected to the proceeding. And it was, in fact, stated sometime
17 ago based upon the that the three judge Federal panel was looking into the constitutionality of this procedure. Just recently the panel decided—do you have a copy of that decision? Do you, Mr. Carta?

MR. CARTA: I don't.

THE COURT: We took the matter up at our Circuit Court meeting but copies were not available to anyone of us. Anything further?

MR. MILLER: Yes, your Honor. The reason we objected in this particular instance——

THE COURT: Isn't it academic at this time?

MR. MILLER: No, it is not, because I would like at this point an order restraining the putative father of this child. Miss Burr for reasons which I can bring out her failure to answer questions, she is afraid Mr. Coburn will retaliate against her in any manner whatsoever in a paternity action. I would like to pass the motion to the Court, restraining order restraining him to make any effort to——

THE COURT: This isn't within the jurisdiction of it here today.

18 MR. MILLER: If the Court can compel Miss Burr to testify, I would submit that the Court has the power to protect her.

THE COURT: I have no power at this time. I see nothing in the present hearing. I would like to oblige you but I can't oblige on the basis—let me put it in the following way: If Mr. Coburn for any reasons threatens, there is a

statute on threatening which provides amply. It's a criminal statute. If you at this time would make complaint to the prosecuting attorney, I will at that time indicate to the prosecuting attorney that he should take action. I can't do anything more than that. I can't restrain him from something which he is under no execution. This is under no criminal statute. I appreciate Miss Burr's insistence with you. I see no legal power that I have to restrain something which hasn't happened and only speculative. I fully appreciate this but if there is any form of threat, it is in the nature of a criminal action and you call the police immediately. People do not have the right to threaten
19 you in any way. If in any way he comes near you or threatens you by felony, you call the police. If that isn't satisfactory, you come into the prosecutor of this court, either Mr. Kane or Mr. Natalie and they will take care of your situation.

MR. MILLER: I think that would be sufficient.

THE COURT: I can't issue a restraining order about something that hasn't happened.

MR. MILLER: Very well. Thank you.

THE COURT: Do you want the record to show the name of the putative father?

MR. MILLER: I don't think it's necessary.

THE COURT: All right. You may leave Miss Burr. You need not proceed any further. Thank you.

(Whereupon, the matter was concluded.)

Rosalyn Carr

October 2, 1973, Middletown, Conn.

Before: The Honorable Eli L. Cramer, Judge.

ROSALYN CARR, 248 Bunker Avenue, Meriden, Connecticut, being duly sworn by the clerk, testified as follows:

20 THE COURT: Do you have counsel, Miss Carr?
THE DEFENDANT: No, I haven't.

THE COURT: Do you want counsel?

THE DEFENDANT: No, I don't believe it's necessary.

THE COURT: You don't feel it's necessary?

THE DEFENDANT: No.

THE COURT: And you wish to appear at this time on your own behalf without counsel?

THE DEFENDANT: Right.

THE COURT: And you don't wish counsel appointed for you?

THE DEFENDANT: No.

THE COURT: All right. Do you wish to consult with a lawyer? There is a lawyer present and I can ask him to give you advice.

THE DEFENDANT: I don't believe it is necessary.

THE COURT: You don't wish a lawyer to act as a friend of the court and this gentleman is here and is very familiar with the subject if you want to discuss it for a moment.

Do you want to take a few moments to discuss it?

21 MR. CARTA: I think that would be a good idea. I discussed this matter with this lady.

THE COURT: This gentleman is a lawyer who is familiar with statutes, familiar with their implications. Your name, for the record.

MR. MILLER: Donald Miller, your Honor.

THE COURT: And a member of the Middletown Bar is going to discuss this matter with you. You are not being appointed but merely as amicus curiae in this case. We will take a few minutes.

(At 2:45 o'clock a ten minute recess was taken.)

AFTER RECESS

THE CLERK: Miss Carr, do you want to step down here please?

THE COURT: She has been sworn?

THE CLERK: Yes, she has been sworn, your Honor.

BY MR. CARTA:

Q. Miss Carr, is your present address— A. My name is Mrs. Carr.

Q. I beg your pardon. Is your present address

22 248 Bunker Avenue, Meriden? A. Yes, it is.

Q. Are you presently on State aid? A. I receive $106.89 a month from the State.

Q. Mrs. Carr, on or about November 1, 1971, did you give birth to a daughter? A. On November the first, 1971, yes.

Q. Mrs. Carr, are you able today to identify or are you willing and able today to identify the father of your daughter? A. I would be willing if I knew. But I don't know so I can't.

Q. Is it your testimony therefore that you do not know? A. I do not know the name of my child's father.

Q. Mrs. Carr, the birth date of Jennifer was November 1, 1971. Is that correct? A. Yes.

Q. That would place the date of conception somewhere around January of 1970? A. Yes, January.

Q. It was January, 1971? A. Yes.

Q. Do you recall some of your male companions

23 during that period of time? A. No. I can truthfully say that I do not remember. It was an affair that I have wanted to put out of my mind and I do not know.

Q. You don't know this individual's name? A. No, I don't. I believe at the time that it was a false name.

Q. Well, do you recall the name that he did give you? A. No, I don't.

Q. Do you recall the address of this individual? A. No, I don't.

Q. Where were you living at the time? A. In Meriden at the same address that I'm at at present.

Q. Did you know that he was living in Meriden? A. No, I knew that he was living somewhere in the Wethersfield area or I was told that is where he lived.

Q. And you have no remembrance, no memory at this

time of the identity, the name of that person? A. No, I do not.

Q. Can you describe that person? A. Well, I could describe him. He was about forty-six, forty-seven, approximately five feet eleven, light complected, light hair, reddish, sort of auburn hair, and other than that I couldn't say too much about him.

24 Q. Well, Mrs. Carr, you have described him fairly well considering the length of time that has passed. Is it your testimony now—— A. Let me say this, I mean, the type of a person that is an unpleasant person, I might remember this name. I will associate a person I can recall them by sight but never be able to hook a name to that person.

Q. Mrs. Carr, how frequent, how many times did you see this person, was he a frequent companion? A. I saw him four times.

Q. And you can't remember what he was known by that or the name that he gave you? A. No, I certainly do not. I wish I did but I don't.

Q. You recall the discussion I had with you yesterday in the lawyers' lounge in this building? A. I certainly do.

Q. Didn't you indicate to me that even if you knew the name you wouldn't give the name? A. I didn't say I wouldn't give the name; I said I would consider it a gross intrusion of my privacy to have to give the name.

THE COURT: Mrs. Carr, let's stop playing games. I'm going to read to you the law under which I am pro-
25 ceeding which compels disclosure of the putative father. I will read it to you and you listen carefully. You just listen.

I will read it so it will be a matter of record. The mother of any child born out of wedlock, or the mother of any child born to any married woman during marriage which child shall be found, if you know, not to be issue of the marriage terminated by a divorce decree or by decree of any court of competent jurisdiction, fails or refuses to disclose the name of the putative father of such child under

oath to the welfare commissioner, if such child is a recipient of public assistance, or to a selectman of a town in which such child resides, if such child is a recipient of general assistance, or otherwise to a guardian ad litem of such child, such mother may be cited to appear before any judge of the Circuit Court and compelled to disclose the name of the putative father under oath and to institute an action to establish the paternity of said child. And this is why you are here. Now (b) any woman having been cited to appear before a judge pursuant to subsection (a),
26 fails to disclose or fails to prosecute a paternity action may be found to be in contempt of Circuit Court, fined not more than $200 and imprisoned not more than one year or both. This is an act of the Legislature and we are not here to play games. It has been upheld by the three judge panel—and I am giving you fair warning, Mrs. Carr, that I don't want any games played. Disclose the name. You are under oath. Now, you have five minutes to do it. I don't want any speeches, just disclose the name.

THE DEFENDANT: I do not know. I am under oath in the court of the State of Connecticut and I can truthfully say I do not know the name of my child's father.

THE COURT: What was the name under which he was known when you went with him?

THE DEFENDANT: That I can truthfully say I do not recall either.

THE COURT: Counsel, was there some information given to you yesterday that this lady said she wouldn't disclose the name?

MR. CARTA: No, your Honor.

27 THE COURT: Did you tell this to the lawyer yesterday that you wouldn't disclose the name?

THE DEFENDANT: I didn't say I wouldn't. I said if I did know, I would consider it a gross intrusion of my privacy to have to do so.

THE COURT: Well, I'm going to order you. This is no gross intrusion. Legislature has determined it is not and the United States District Court. I do not consider it a gross

intrusion, nor the Legislature of the United States. Disclose the name and whether it intrudes on your privacy is something you can come forth yourself on later. If you don't, I will exercise the penalty by law and I am going to send you to jail.

THE DEFENDANT: Your Honor, you are trying to make me say something that I don't know.

THE COURT: You have made ambivalent statement that it is a gross intrusion on your privacy.

THE DEFENDANT: I feel that it is. Even having to be here is a gross intrusion of my privacy.

28 THE COURT: If you wish to discontinue it, discontinue being a ward of the State of Connecticut and they will have no right to compel you.

THE DEFENDANT: All right. I will do that if that is what the Court wants, then that is finished.

THE COURT: That can happen later. But you are receiving aid at the present time when you were served.

MR. MILLER: May we have this continued for a week possibly? I believe Mrs. Carr does honestly at this time not remember the name of this person but perhaps in a week she might be able to find out the name of the father.

THE COURT: I will continue it a week, and if you do not disclose——

THE DEFENDANT: Your Honor, if I don't know, how can I——

THE COURT: You do know, Mrs. Carr. I don't believe you.

MR. CARTA: May that be two weeks to place that on the same day as the other ones?

THE COURT: You be back here two weeks from
29 today with the other matters at two o'clock Mrs. Carr, and you have arrangements made if you do not disclose at that time, you have arrangements made to take care of your child.

THE DEFENDANT: I have two children, your Honor.

MR. MILLER: Your Honor, am I required to be back on that day as well?

THE COURT: Do you wish this young man to act as your attorney?

MR. MILLER: I should say I am with Legal Aid, one of which Mrs. Carr does not meet.

THE COURT: Do you wish some form of representation?

THE DEFENDANT: I will get counsel.

THE COURT: You will get your own?

THE DEFENDANT: I will get counsel.

THE COURT: Continued to October 16th, two o'clock.

(Whereupon, the matter was continued to October 16, 1973.)

October 2, 1973, Middletown, Conn.

Before: The Honorable Eli L. Cramer, Judge.

30 MR. CARTA: These matters we have gotten the required information from individuals in question so I would ask that these matters either go off or on behalf of the State withdraw these matters from any further questions.

THE COURT: I am putting the following notation, counsel, on each file which has been withdrawn: Counsel for the plaintiff appeared and stated that the requested information had been given to the Welfare Commissioner by the defendant to his satisfaction, and the matter is withdrawn from court.

MR. CARTA: That's fine, your Honor.

THE COURT: Would you give the names?

MR. CARTA: Irza Camacho, Adeline Pelletier, Patricia Gaudet, Jean Hoadly, Maureen Hunt, June Stergos, Deborah Staples.

Your Honor, the matter of Denise Russell. She is being represented by counsel. I have been in communication with them. Because this matter has not been disposed as yet, I would ask that it go over or continued to a date certain.

THE COURT: Continue it to a date certain?

31 MR. CARTA: Yes.

THE COURT: What date, Mr. Kay?

THE CLERK: A couple of weeks at two o'clock.

MR. CARTA: I have a feeling it will be disposed of.

THE COURT: October 16.

MR. CARTA: That would be fine.

Linda Dunphy, your Honor, did not answer the show cause order. She is being represented and again I have called her.

THE COURT: Continue it.

MR. CARTA: She has been served.

THE COURT: October 16.

MR. CARTA: One of the ones which isn't a part of the clerk's file hasn't been served yet.

THE CLERK: I don't want that.

(Whereupon, the matters were concluded.)

December 31, 1973, Middletown, Conn.

Before: The Honorable Daniel F. Spallone, Judge.

THE COURT: Kathleen Warren.

32 MR. CARTA: That has been disposed of, your Honor. That can go off.

THE COURT: Barbara Pino.

MR. CARTA: She is now represented by Attorney Miller, and he has asked for a continuance about two weeks and I have no objection to that.

THE COURT: Continued to January 14th, 1974. That would be two months from today.

MR. CARTA: Thank you, your Honor.

THE COURT: We are concerned with the Denise Russell matter. Keep an eye out for her and let the Court know if she shows.

(Denise Russell did not appear.)

(Whereupon, the Court adjourned.)

Supreme Court, U. S.
FILED
FEB 20 1975
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-6033

SHARON ROE AND DOROTHY POE, ON BEHALF OF THEMSELVES AND OTHERS SIMILARLY SITUATED,

Appellants,

v.

NICHOLAS NORTON, INDIVIDUALLY, AS COMMISSIONER OF WELFARE OF THE STATE OF CONNECTICUT, AND ON BEHALF OF OTHERS SIMILARLY SITUATED,

Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

SUPPLEMENTAL BRIEF OF APPELLANTS

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On January 4, 1975, President Ford signed into law Public Law (P.L.) 93-647, the "Social Services Amendments of 1974." One of the major thrusts of the Act's extensive amendments to the Social Security Act was to strengthen enforcement of support orders with the aim

of reducing the cost of federally supported categorical welfare programs[1]. The child support provisions include additional requirements for state Aid to Families With Dependent Children (AFDC) plans claiming federal sharing, including 1) that the states pay 40% of the first $50.00 per month recovered from absent parents to recipient families in addition to their present grants, 2) that such families assign their right to receive such support to the states, and 3) that parents would, as a condition of eligibility, be required to "cooperate" with the state's efforts to locate and secure support from, absent parents.

Appellants submit that P.L. 93-647 Part B strengthens and clarifies their contention that the Connecticut procedure and sanctions embodied in Connecticut General Statutes (C.G.S.) Section 52-440b are in basic conflict with the Social Security Act. In Connecticut the mother of an illegitimate child receiving assistance may be incarcerated not just lose her eligibility for AFDC payments, if she refuses to cooperate in the establishment of her child's paternity. And in Connecticut, the effect, carefully avoided by the new amendments[2], is often to deprive children, as well as mother, of much needed benefits, See, e.g. Case AA (Appendix to Children's Brief, 7a, 8a). Accordingly,

[1]Part B of P.L. 93-647 and the "NOLEO" provisions, 42 U.S.C. Sections 602(a)(17) and (18), which are to be supplanted by Part B, are included in the Appendix to this Brief.

[2]P.L. 93-647, Part B (establishing a new Part D to Title IV of the Social Security Act, Sections 451-460 of that Act, and a new Section 6305 to the Internal Revenue Code. Also amending Section 402 of the Social Security Act).

appellant mothers have requested leave to file this short supplement to their Brief[3].

Part B of P.L. 93-647 deals with child support questions in several different ways. It permits utilization of the federal courts and the Internal Revenue Service for the enforcement and collection of child support under some circumstances, new I.R.C. Section 6305, new S.S.A. Section 460. It will require as a condition of receiving federal assistance in AFDC cases that the state have a state plan for child support which conforms with other requirements including 1) a statewide child support plan operated by a single state agency with state financial participation, new S.S.A. Sections 454(1)-(3), 2) diverting support payments

[3]The amendments also may raise some constitutional questions similar to those briefed by appellants in their principal brief: that the government, by requiring cooperation has impermissibly invaded an area of private decision-making and made unwarranted assumptions about the best interests of children, forcing revelation of the most private of sexual matters, and discriminations against welfare recipients because of their poverty. It may be notable that nothing in P.L. 93-647 discriminates, as C.G.S. Section 52-440b does, on the basis of illegitimacy or sex. This Brief will argue only that C.G.S. Section 52-440b, with its quasi-criminal sanctions, has been rejected by Congress as a method of encouraging recoupment of welfare monies from the fathers of illegitimates or of protecting their interests, that the amendment of the Social Security Act only emphasizes its conflict with the Connecticut statute.

New Section 402(a)(26)(B) may well moot, after its effective date of July 1, 1975, the statutory claims before the Court in *Lavine v. Shirley* No. 73-1095 (argued December 18, 1974). But the addition of Part B sharpens the differences between the several statutory arguments presented in the case at bar and those in *Lavine*.

made by an absent parent on behalf of an AFDC family to the State, new Section 454(6), 3) making resources available for enforcement of non-welfare connected support matters on a fee for service basis, new Section 454(6), 4) utilizing several sources, including a new federal Parent Locator Service, to locate absent parents, new Section 454(8), 5) extensive cooperation with courts, administrative agencies and other states, and 6) undertaking to determine and establish the paternity of illegitimate children receiving AFDC, new Section 454(4). Support obligations owed to state or federal governments are rendered nondischargeable in bankruptcy, new Section 454(b). And the new amendments mandate that 40% of the first $50.00 received by the state for the support of an AFDC child be distributed to the caretaker relative of such child, new Section 475(a)(1).

Finally, the amendments supplant existing "NOLEO" provisions and add three new requirements for approval of state AFDC plans:

> (25) provide (A) that, as a condition of eligibility under the plan, each applicant for or recipient of aid shall furnish to the State agency his Social Security account number (or numbers, if he has more than one such number), and (B) that such State agency shall utilize such account numbers, in addition to any other means of identification it may determine to employ in the administration of such plan;
>
> (26) provide that, as a condition of eligibility for aid, each applicant or recipient will be required–
>
> (A) to assign the State any rights to support from any other person such applicant may have (i) in his own behalf or in behalf of any other family member for whom the applicant is applying for or

> receiving aid, and (ii) which have accrued at the time such assignment is executed,
>
> (B) to cooperate with the State (i) in establishing the paternity of a child born out of wedlock with respect to whom aid is claimed, and (ii) in obtaining support payments for such applicant and for a child with respect to whom such aid is claimed, or in obtaining any other payments or property due such applicant or such child and that, if the relative with whom a child is living is found to be ineligible because of failure to comply with the requirements of this paragraph, any aid for which such child is eligible will be provided in the form of protective payments as described in section 406(b)(2) (without regard to subparagraphs (A) through (E) of such section); and
>
> (27) provide, that the State have in effect a plan approved under Part D and operate a child support program in conformit with such plan.

Congress did not, in making the changes found in P.L. 93-647 Part B, alter the basic purposes of the AFDC program:

> . . . encouraging the care of dependent children in their own homes or in the homes of relatives by enabling each state to furnish financial assistance . . . to needy dependent children and the parents or relatives with whom they are living, to help strengthen family life and to help such parents or relatives to attain or retain capability for the maximum self-support and personal independence consistent with the maintenance of continuing parental care and protection. (42 U.S.C., Section 601).

On the contrary, the Senate Finance Committee, from which the legislation emerged, reaffirmed that commitment:

The Committee believes that an AFDC child has a right to have its paternity ascertained in a fair and efficient manner unless identification of the father is clearly against the best interests of the child. Although this may in some cases conflict with what a social worker considers the mother's short term interests, the Committee feels that the child's right to support, inheritance, and to know who his father is deserves the higher priority. . . . the committee acknowledges that legislation must recognize the interest primarily at stake in the paternity action to be that of the child. Since the child cannot act on his own behalf in the short time after his birth when there is hope of finding its father, the Committee feels a mechanism should be provided to ascertain the child's paternity whenever it seems that this would both be possible and in the child's best interest. (S. Rept. 93-553, pp. 48-9, S. Rept. 93-1356, pp. 51-2).

A parsing of the available legislative history shows that Congress emphatically rejected the sanctions of C.G.S. Section 52-440b. In so doing, Congress emphasized the fundamental conflict between the Connecticut statute and the Social Security Act[4].

---

[4] Although the Connecticut legislature convened after the signing of P.L. 93-647 and is in session at this writing, there is, to the best of counsel's information, no bill pending before it which would enact a new program to comply with P.L. 93-647 or to repeal or modify Section 52-440b. The time for submission of new bills has passed.

I.

LEGISLATIVE HISTORY OF P.L. 93-647.

What became P.L. 93-647 Part B was initially passed by the Senate as part of the 92nd Congress H.R. 1. It was eliminated by the conference, and therefore did not become law in the 92nd Congress. In the 93rd Congress, as in the 92nd, the impetus came from the Senate, notably two bills introduced before the Senate Finance Committee: S. 2081 and S. 1842. After hearings on September 25, 1973, the Finance Committee reported favorably on one of the two proposals, S. Rept. 93-553 November 21, 1973. The Committee had added it to a House-passed bill, H.R. 3153, and the Senate as a whole accepted it in that form, sending it to a conference from which it did not emerge.

Finding the conference on H.R. 3153 to be at an impasse, the House of Representatives passed H.R. 17045 on December 9, 1974. H.R. 17045 was very similar to the House version of H.R. 3153 and contained no part dealing with child support, 220 Cong. Rec. H. 11417. The focus of the House bills in both cases was on social service programs intended to strengthen and preserve the existing family. In favoring the House proposals, Representative McKay explained:

> Many present Government programs tend to fragment and undermine the family or at least give the family unit low priority. . . . Other social service programs put increasing emphasis on programs which take children out of the home. . . . These other programs which tend to weaken rather than strengthen the family can only be contraproductive. Many of our social problems

> are the result of weakened family ties and will not be solved without achieving quality family life. (220 Cong. Rec. H. 11417.)

The Senate then passed H.R. 17045 with a number of riders added, including what had originated as S. 2081, 220 Cong. Rec. S. 21768 (December 17, 1974). H.R. 17045, complete with amendments and after a hasty conference committee deliberation, was passed by both chambers and sent to the President for signature on December 20, 1974, the final day of the session. President Ford signed it into law on January 4, 1975[5].

Although, like many last minute legislative matters, the floor debates in Congress are far from clear, its basic intent is clear: to create a new program for the enforcement of child support obligations, principally orders, for the purpose of reducing both state and federal welfare budgets. See e.g. 220 Cong. Rec. S. 21733 (Senator Long), S. 21748-9 (Senator Montoya)

---

[5]It is not, at this writing, certain that P.L. 93-647 will become effective July 1, 1975 as initially provided. In signing it into law, President Ford announced that he would propose changes to several parts, including the child support provisions, early in the current 94th Congress:

> In pursuit of [the objective of collection of child support payments from absent parents] certain provisions of this legislation go too far by injecting the Federal government into domestic relations. . . . They are also an undesirable addition to the workload of the Federal Courts, the Internal Revenue Service and the Department of Health, Education and Welfare Audit Agency. Further, the establishment of a parent locator service in the Department of H.E.W. with access to all Federal records raises serious privacy and administrative issues. (Vol. 11, Weekly Compilation of Presidential Documents No. 2 p. 20, January 13, 1975).

(December 17, 1974), Hearings on S. 1842, S. 2081, p. 62 (Senator Nunn, sponsor of S. 2081), p. 71 (Senator Bellmon, sponsor of S. 1842). In the House, which considered these provisions only on December 20, 1974 and very briefly then, the following exchange occurred, 220 Cong. Rec. H. 12589:

> *Rep. Abzug:* What I would like to see is some legislation without a punitive requirement on the mother of the child receiving AFDC to locate the runaway father. I am concerned because the history has been in those states which have sought to utilize these (sic) type of arrangements, that they have been utilized to deprive the people, mothers and children, of the money that they need to exist. . .
>
> *Rep. Pettis:* That is not the intent. In fact, this legislation will do more for mothers than is being done now, because the mothers are not going to be denied under this legislation anything to which they have been entitled up to now. We hope that if this legislation is passed many of these mothers will get far more money under the provisions of this act than they are now getting under the Social Services Act.

Representative Pettis was a member of the conference committee and these remarks occurred in the course of presentation of that committee's report, a report which had not been printed due to the last minute rush and which was, therefore, not available to House members. The sense of urgency which impelled the House to pass what became Part B. of P.L. 93-647, stemmed from its interest in other parts of the legislation, notably the social service amendments contained in Part A. Nor was there at any time any detailed discussion of these provisions in the Senate.

II.

PUBLIC LAW 93-647 EMPHASIZES THE CONFLICT BETWEEN CONNECTICUT GENERAL STATUTES SECTION 52-440b AND THE SOCIAL SECURITY ACT.

The legislative history outlined above reveals Congress' intent in passing P.L. 93-647 to be directly contrary to C.G.S. Section 52-440b. Congress corrected to some degree what Senator Long referred to as the "unconscionable failure" to provide welfare parents with a financial incentive to help track down deserting parents. And it decided that information needed to enforce support obligations may, at the same time, be induced from caretaker relatives by the comparatively mild sanction of threatened termination of parental welfare benefits, when combined with a financial incentive.

Congress stopped far short of the quasi-criminal sanctions found in the Connecticut statute. It rejected Senator Bellmon's bill, S. 1842, which provided criminal penalties against non-cooperating parents, sanctions very similar to those found in the Connecticut statute[6]. The difference between a criminal sanction and a purely civil loss of benefits is crucial. As the Court recognized in *Wyman v. James* 400 U.S. 309, 324, 27 L.Ed.2d 408, 418:

> Mrs. James has the "right" to refuse the home visit, but a consequence in the form of cessation

[6]Proposed S. 1842, Section 2031 is set out in full in the Appendix. Penalties were a fine of not more than $1000 or imprisonment for not more than one year. In the Connecticut statute they are $200 or one year.

> of aid . . . flows from that refusal. The choice is entirely hers.

And the Court distinguished *Camara v. Municipal Court* 387 U.S. 523, 18 L.Ed.2d 930 and *See v. City of Seattle* 387 U.S. 541, 18 L.Ed.2d 943 (1967) on the basis that the cessation of aid was not a sanction implicating the constitutional right in question, the privilege against self-incrimination:

> If a statute made her refusal a criminal offense, and if this case were one concerning her prosecution under that statute, Camara and See would have conceivable pertinency. (at 325).

And the Connecticut statute does not, on its face, give the "non-cooperating" mother even Mrs. James' choice. See e.g. *Commissioner v. Elizabeth Stone* (transcript reprinted in the Appendix to Brief of Amici).

Congress additionally took care to heed Secretary (of Health, Education and Welfare) Weinberger's warning that it should not terminate the child's AFDC benefits even if it chose to discontinue the parent for failure to cooperate with the state in pursuing the absent parent for support, Hearing Before the Committee on Finance, United States Senate, 93rd Congress 1st Session on S. 1842, S. 2081, pp. 81-82.[7] Congress additionally

[7]Unfortunately, Congress did not heed Secretary Weinberger's other concerns:

> Finally, I would suggest that the provision requiring mothers to cooperate in determining paternity and collecting child support be clarified so that the extent of cooperation States may require is explicitly stated and individual rights are protected. (Hearings at 82).

And it made such cooperation a mandatory federal condition of eligibility, rejecting Weinberger's request that it be left to state option, Hearings at 247.

carefully avoided the result of the Connecticut statute: that to avoid its quasi-criminal sanctions, mothers have declined to apply for or have removed themselves and their children from the rolls, thus depriving the children of much needed benefits.

Congress sought to accomplish its recoupment objective, recovery from legally liable parents of money contributed by the government to the support of dependent children and supervising relatives, in a manner consistent with the paramount goals of the AFDC program, quoted supra p. 4. The Connecticut statute, like the rejected S. 1842, directly undercuts that goal.

In new Section 402(a)(26) of the Social Security Act, Congress applied its chosen sanction for non-cooperation uniformly to all welfare recipients while the Connecticut statute singles out the weakest and most powerless group only, mothers of illegitimate children. Cf. *Rinaldi v. Yeager* 384 U.S. 305, 16 L.Ed.2d 577 (1962) and *James v. Strange* 407 U.S. 128, 32 L.Ed.2d 435 (1972).

Although the mandatory Parent Locator Service and use of federal records to search for such parents may appear to undercut 45 C.F.R. 205.50, mandating procedures which will not violate recipients right to privacy, it should be noted that Congress nowhere indicated any such intent, and that the privacy interests principally violated by those mechanisms are those of absent parents and not of recipients[8]. In contrast, the Connecticut statute operates directly to the detriment

[8] Also, while those provisions are not in issue here, it should be noted that they are the aspects which seemed particularly objectionable to President Ford and Secretary Weinberger.

of recipients right to privacy,[9] both in its procedures and substantively.

Additionally, the child support programs mandated by Congress in P.L. 93-647 require administration by a single state agency, while the Connecticut procedure utilized for Section 52-440b involves vast delegation of discretionary power to private attorneys, attorneys who are paid on a "contingent fee" basis, Appendix 82, 110, 115, 121-2. This administrative structure is in direct violation of the requirement that the program be administered by a single state agency.

Finally, and perhaps most significantly, the Senate Finance Committee reports make clear a Congressional intent not to pursue paternity actions where the acknowledgedly paramount interests of the particular child would be adversely affected, Ante, p. 4. It is precisely the absence of such history, either legislative or administrative, which grounds appellants' substantive attack on the Connecticut statute.

Thus it is clear that Congress, in enacting P.L. 93-647, decisively rejected the approach to recoupment from absent parents of welfare monies expended on their dependents which is embodied in C.G.S. Section 52-440b. Congress thus clarified and emphasized the

[9] See Appellants' Brief, pp. 18-20.

conflict which, appellant submits, had existed between the unusual and draconian Connecticut procedure and the provisions of the Social Security Act. A fortiori, then, C.G.S. Section 52-440b must be struck down.

Respectfully submitted,

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This is to certify that on the 14th day of February, 1975, copies of the foregoing Supplemental Brief and Appendix thereto were mailed postage prepaid to counsel of record: Carl Ajello, Attorney General, Michael Anthony Arcari, Assistant Attorney General, 90 Brainard Road, Hartford, Connecticut and Rosen and Dolan, Esqs. 265 Church Street, New Haven, Connecticut.

APPENDIX

1. The current "NOLEO" provisions, repealed effective July 1, 1975, provide:

42 U.S.C. Section 602 (S.S.A. Section 402) (a)(17)

(17) provide–

(A) for the development and implementation of a program under which the State agency will undertake–

(i) in the case of a child born out of wedlock who is receiving aid to families with dependent children, to establish the paternity of such child and secure support for him, and

(ii) in the case of any child receiving such aid who has been deserted or abandoned by his parent, to secure support for such child from such parent (or from any other person legally liable for such support), utilizing any reciprocal arrangements adopted with other states to obtain or enforce court orders for support, and

(B) for the establishment of a single organizational unit in the State agency or local agency administering the state plan in each political subdivision which will be responsible for the administration of the program referred to in clause (A):

42 U.S.C. Section 602 (S.S.A. Section 402) (a)(18)

(18) provide for entering into cooperative arrangements with appropriate courts and law enforcement officials (A) to assist the State agency in administering the program referred to in clause (17)(A), including the entering into of financial arrangements with such courts and officials in order to assure optimum results under such program, and (B) with respect to any other matters of common concern to such courts or officials and the State agency or local agency administering the State plan;

2. The proposal to make non-cooperation a criminal offense, found in proposed S. 1842, provided:

> Sec. 2031. (a) If any child has been deprived of parental support or care by reason of the continued absence from the home of a parent and is a recipient of aid to families with dependent children under a State plan approved under Part A of title IV, it shall be the duty of any individual who is the relative with whom such child is living (within the meaning of 'relative with whom any dependent child is living', as defined in section 406(c)) promptly to disclose, to the local welfare office administering such plan for the area in which such individual resides, any information which such individual has regarding the identity, address, or place of employment of the parent of such child who, by reason of his continued absence from the home, has deprived such child of parental support or care.
>
> (b) Any individual, having a duty under subsection (a) to disclose information which he possesses and who willfully fails to disclose such information as provided in subsection (a), shall be fined not more than $1000 and imprisoned for not more than one year.

3. PUBLIC LAW 93-647 (as approved by both the Senate and the House of Representatives December 20, 1974, and signed by the President January 4, 1975). Part B includes all of the sections relevant to this case.

PART B—CHILD SUPPORT PROGRAMS

CHILD SUPPORT AND ESTABLISHMENT OF PATERNITY

In General

SEC. 101. (a) Title IV of the Social Security Act is amended by adding after part C the following new part:

"PART D—CHILD SUPPORT AND ESTABLISHMENT OF PATERNITY

"APPROPRIATION

"SEC. 451. For the purpose of enforcing the support obligations owed by absent parents to their children, locating absent parents, establishing paternity, and obtaining child support, there is hereby authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this part.

"DUTIES OF THE SECRETARY

"SEC. 452. (a) The Secretary shall establish, within the Department of Health, Education, and Welfare a separate organizational unit, under the direction of a designee of the Secretary, who shall report directly to the Secretary and who shall—

"(1) establish such standards for State programs for locating absent parents, establishing paternity, and obtaining child support as he determines to be necessary to assure that such programs will be effective;

"(2) establish minimum organizational and staffing requirements for State units engaged in carrying out such programs under plans approved under this part;

"(3) review and approve State plans for such programs;

"(4) evaluate the implementation of State programs established pursuant to such plan, conduct such audits of State programs established under the plan approved under this part as may be necessary to assure their conformity with the requirements of this part, and, not less often than annually, conduct a complete audit of the programs established under such plan in each State and determine for the purposes of the penalty provision of section 403(h) whether the actual operation of such programs in each State conforms to the requirements of this part;

"(5) assist States in establishing adequate reporting procedures and maintain records of the operations of programs established pursuant to this part in each State;

"(6) maintain records of all amounts collected and disbursed under programs established pursuant to the provisions of this part and of the costs incurred in collecting such amounts;

"(7) provide technical assistance to the States to help them establish effective systems for collecting child support and establishing paternity;

"(8) receive applications from States for permission to utilize the courts of the United States to enforce court orders for support against absent parents and, upon a finding that (A) another State has not undertaken to enforce the court order of the originating State against the absent parent within a reasonable time, and (B) that utilization of the Federal courts is the only reasonable method of enforcing such order, approve such applications;

"(9) operate the Parent Locator Service established by section 453; and

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"(10) not later than June 30 of each year beginning after December 31, 1975, submit to the Congress a report on all activities undertaken pursuant to the provisions of this part.

"(b) The Secretary shall, upon the request of any State having in effect a State plan approved under this part, certify the amount of any child support obligation assigned to such State to the Secretary of the Treasury for collection pursuant to the provisions of section 6305 of the Internal Revenue Code of 1954. No amount may be certified for collection under this subsection except the amount of the delinquency under a court order for support and upon a showing by the State that such State has made diligent and reasonable efforts to collect such amounts utilizing its own collection mechanisms, and upon an agreement that the State will reimburse the United States for any costs involved in making the collection. The Secretary after consultation with the Secretary of the Treasury may, by regulation, establish criteria for accepting amounts for collection and for making certification under this subsection including imposing such limitations on the frequency of making such certifications under this subsection.

"(c) (1) There is hereby established in the Treasury a revolving fund which shall be available to the Secretary without fiscal year limitation, to enable him to pay to the States for distribution in accordance with the provisions of section 457 such amounts as may be collected and paid (subject to paragraph (2)) into such fund under section 6305 of the Internal Revenue Code of 1954.

"(2) There is hereby appropriated to the fund, out of any moneys in the Treasury not otherwise appropriated, amounts equal to the amounts collected under section 6305 of the Internal Revenue Code of 1954, reduced by the amounts credited or refunded as overpayments of the amounts so collected. The amounts appropriated by the preceding section shall be transferred at least quarterly from the general fund of the Treasury to the fund on the basis of estimates made by the Secretary of the Treasury. Proper adjustments shall be made in the amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

"PARENT LOCATOR SERVICE

"SEC. 453. (a) The Secretary shall establish and conduct a Parent Locator Service, under the direction of the designee of the Secretary referred to in section 452(a), which shall be used to obtain and transmit to any authorized person (as defined in subsection (c)) information as to the whereabouts of any absent parent when such information is to be used to locate such parent for the purpose of enforcing support obligations against such parent.

"(b) Upon request, filed in accordance with subsection (d) of any authorized person (as defined in subsection (c)) for the most recent address and place of employment of any absent parent, the Secretary shall, notwithstanding any other provision of law, provide through the Parent Locator Service such information to such person, if such information—

"(1) is contained in any files or records maintained by the Secretary or by the Department of Health, Education, and Welfare; or

"(2) is not contained in such files or records, but can be obtained by the Secretary, under the authority conferred by subsection (e), from any other department, agency, or instrumentality, or the United States or of any State.

No information shall be disclosed to any person if the disclosure of such information would contravene the national policy or security interests of the United States or the confidentiality of census data. The Secretary shall give priority to requests made by any authorized person described in subsection (c) (1).

"(c) As used in subsection (a), the term 'authorized person' means—

"(1) any agent or attorney of any State having in effect a plan approved under this part, who has the duty or authority under such plans to seek to recover any amounts owed as child support (including, when authorized under the State plan, any official of a political subdivision);

"(2) the court which has authority to issue an order against an absent parent for the support and maintenance of a child, or any agent of such court; and

"(3) the resident parent, legal guardian, attorney, or agent of a child (other than a child receiving aid under part A of this title) (as determined by regulations prescribed by the Secretary) without regard to the existence of a court order against an absent parent who has a duty to support and maintain any such child.

"(d) A request for information under this section shall be filed in such manner and form as the Secretary shall by regulation prescribe and shall be accompanied or supported by such documents as the Secretary may determine to be necessary.

"(e) (1) Whenever the Secretary receives a request submitted under subsection (b) which he is reasonably satisfied meets the criteria established by subsections (a), (b), and (c), he shall promptly undertake to provide the information requested from the files and records maintained by any of the departments, agencies, or instrumentalities of the United States or of any State.

"(2) Notwithstanding any other provision of law, whenever the individual who is the head of any department, agency, or instrumentality of the United States receives a request from the Secretary for information authorized to be provided by the Secretary under this section, such individual shall promptly cause a search to be made of the files and records maintained by such department, agency, or instrumentality with a view to determining whether the information requested is contained in any such files or records. If such search discloses the information requested, such individual shall immediately transmit such information to the Secretary, except that if any information is obtained the disclosure of which would contravene national policy or security interests of the United States or the confidentiality of census data, such information shall not be transmitted and such individual shall immediately notify the Secretary. If such search fails to disclose the information requested, such individual shall immediately so notify the Secretary. The costs incurred by any

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such department, agency, or instrumentality of the United States or of any State in providing such information to the Secretary shall be reimbursed by him. Whenever such services are furnished to an individual specified in subsection (c)(3), a fee shall be charged such individual. The fee so charged shall be used to reimburse the Secretary or his delegate for the expense of providing such services.

"(f) The Secretary, in carrying out his duties and functions under this section, shall enter into arrangements with State agencies administering State plans approved under this part for such State agencies to accept from resident parents, legal guardians, or agents of a child described in subsection (c)(3) and, after determining that the absent parent cannot be located through the procedures under the control of such State agencies, to transmit to the Secretary requests for information with regard to the whereabouts of absent parents and otherwise to cooperate with the Secretary in carrying out the purposes of this section.

"STATE PLAN FOR CHILD SUPPORT

"SEC. 454. A State plan for child support must--

"(1) provide that it shall be in effect in all political subdivisions of the State;

"(2) provide for financial participation by the State;

"(3) provide for the establishment or designation of a single and separate organizational unit, which meets such staffing and organizational requirements as the Secretary may by regulation prescribe, within the State to administer the plan;

"(4) provide that such State will undertake—

"(A) in the case of a child born out of wedlock with respect to whom an assignment under section 402(a)(26) of this title is effective, to establish the paternity of such child, and

"(B) in the case of any child with respect to whom such assignment is effective, to secure support for such child from his parent (or from any other person legally liable for such support), utilizing any reciprocal arrangements adopted with other States, except that when such arrangements and other means have proven ineffective, the State may utilize the Federal courts to obtain or enforce court orders for support;

"(5) provide that, in any case in which child support payments are collected for a child with respect to whom an assignment under section 402(a)(26) is effective, such payments shall be made to the State for distribution pursuant to section 457 and shall not be paid directly to the family except that this paragraph shall not apply to such payments (except as provided in section 457(c)) for any month in which the amount collected is sufficient to make such family ineligible for assistance under the State plan approved under part A;

"(6) provide that (A) the child support collection or paternity determination services established under the plan shall be made available to any individual not otherwise eligible for such services upon application filed by such individual with the State, (B) an

application fee for furnishing such services may be imposed, except that the amount of any such application fee shall be reasonable, as determined under regulations of the Secretary, and (C) any costs in excess of the fee so imposed may be collected from such individual by deducting such costs from the amount of any recovery made;

"(7) provide for entering into cooperative arrangements with appropriate courts and law enforcement officials (A) to assist the agency administering the plan, including the entering into of financial arrangements with such courts and officials in order to assure optimum results under such program, and (B) with respect to any other matters of common concern to such courts or officials and the agency administering the plan;

"(8) provide that the agency administering the plan will establish a service to locate absent parents utilizing—

"(A) all sources of information and available records, and

"(B) the Parent Locator Service in the Department of Health, Education, and Welfare;

"(9) provide that the State will, in accordance with standards prescribed by the Secretary, cooperate with any other State—

"(A) in establishing paternity, if necessary,

"(B) in locating an absent parent residing in the State (whether or not permanently) against whom any action is being taken under a program established under a plan approved under this part in another State,

"(C) in securing compliance by an absent parent residing in such State (whether or not permanently) with an order issued by a court of competent jurisdiction against such parent for the support and maintenance of a child or children of such parent with respect to whom aid is being provided under the plan of such other State, and

"(D) in carrying out other functions required under a plan approved under this part;

"(10) provide that the State will maintain a full record of collections and disbursements made under the plan and have an adequate reporting system;

"(11) provide that amounts collected as child support shall be distributed as provided in section 457;

"(12) provide that any payment required to be made under section 456 or 457 to a family shall be made to the resident parent, legal guardian, or caretaker relative having custody of or responsibility for the child or children; and

"(13) provide that the State will comply with such other requirements and standards as the Secretary determines to be necessary to the establishment of an effective program for locating absent parents, establishing paternity, obtaining support orders, and collecting support payments.

"PAYMENTS TO STATES

"SEC. 455. From the sums appropriated therefor, the Secretary shall pay to each State for each quarter, beginning with the quarter com-

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mencing July 1, 1975, an amount equal to 75 percent of the total amounts expended by such State during such quarter for the operation of the plan approved under section 451 except that no amount shall be paid to any State on account of furnishing collection services (other than parent locator services) to individuals under section 451(6) during any period beginning after June 30, 1976.

"SUPPORT OBLIGATIONS

"SEC. 456. (a) The support rights assigned to the State under section 402(a)(26) shall constitute an obligation owed to such State by the individual responsible for providing such support. Such obligation shall be deemed for collection purposes to be collectible under all applicable State and local processes.

"(1) The amount of such obligation shall be—

"(A) the amount specified in a court order which covers the assigned support rights, or

"(B) if there is no court order, an amount determined by the State in accordance with a formula approved by the Secretary, and

"(2) Any amounts collected from an absent parent under the plan shall reduce, dollar for dollar, the amount of his obligation under paragraphs (1) (A) and (B).

"(b) A debt which is a child support obligation assigned to a State under section 402(a)(26) is not released by a discharge in bankruptcy under the Bankruptcy Act.

"DISTRIBUTION OF PROCEEDS

"SEC. 457. (a) The amounts collected as child support by a State pursuant to a plan approved under this part during the 15 months beginning July 1, 1975, shall be distributed as follows:

"(1) 40 per centum of the first $50 of such amounts as are collected periodically which represent monthly support payments shall be paid to the family without any decrease in the amount paid as assistance to such family during such month;

"(2) such amounts as are collected periodically which are in excess of any amount paid to the family under paragraph (1) which represent monthly support payments shall be retained by the State to reimburse it for assistance payments to the family during such period (with appropriate reimbursement of the Federal Government to the extent of its participation in the financing);

"(3) such amounts as are in excess of amounts retained by the State under paragraph (2) and are not in excess of the amount required to be paid during such period to the family by a court order shall be paid to the family; and

"(4) such amounts as are in excess of amounts required to be distributed under paragraphs (1), (2), and (3) shall be (A) retained by the State (with appropriate reimbursement of the Federal Government to the extent of its participation in the financing) as reimbursement for any past assistance payments made to the family for which the State has not been reimbursed or (B) if no assistance payments have been made by the State which have not been repaid, such amounts shall be paid to the family.

"(b) The amounts collected as child support by a State pursuant to a plan approved under this part during any fiscal year beginning after September 30, 1976, shall be distributed as follows:

"(1) such amounts as are collected periodically which represent monthly support payments shall be retained by the State to reimburse it for assistance payments to the family during such period (with appropriate reimbursement of the Federal Government to the extent of its participation in the financing);

"(2) such amounts as are in excess of amounts retained by the State under paragraph (1) and are not in excess of the amount required to be paid during such period to the family by a court order shall be paid to the family; and

"(3) such amounts as are in excess of amounts required to be distributed under paragraphs (1) and (2) shall be (A) retained by the State (with appropriate reimbursement of the Federal Government to the extent of its participation in the financing) as reimbursement for any past assistance payments made to the family for which the State has not been reimbursed or (B) if no assistance payments have been made by the State which have not been repaid, such amounts shall be paid to the family.

"(c) Whenever a family for whom child support payments have been collected and distributed under the plan ceases to receive assistance under part A of this title, the State may—

"(1) continue to collect such support payments from the absent parent for a period of not to exceed three months from the month following the month in which such family ceased to receive assistance under part A of this title, and pay all amounts so collected to the family; and

"(2) at the end of such three-month period, if the State is authorized to do so by the individual on whose behalf the collection will be made, continue to collect such support payments from the absent parent and pay the net amount of any amount so collected to the family after deducting any costs incurred in making the collection from the amount of any recovery made.

"INCENTIVE PAYMENT TO LOCALITIES

"SEC. 458. (a) When a political subdivision of a State makes, for the State of which it is a political subdivision, or one State makes, for another State, the enforcement and collection of the support rights assigned under section 402(a)(26) (either within or outside of such State), there shall be paid to such political subdivision or such other State from amounts which would otherwise represent the Federal share of assistance to the family of the absent parent—

"(1) an amount equal to 25 per centum of any amount collected (and required to be distributed as provided in section 457 to

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reduce or repay assistance payments) which is attributable to the support obligation owed for 12 months; and

"(2) an amount equal to 10 per centum of any amount collected (and required to be distributed as provided in section 457 to reduce or repay assistance payments) which is attributable to the support obligation owed for any month after the first twelve months for which such collections are made.

"(b) Where more than one jurisdiction is involved in such enforcement or collection, the amount of the incentive payment determined under paragraphs (1) and (2) of subsection (a) shall be allocated among the jurisdictions in a manner to be prescribed by the Secretary.

"CONSENT BY THE UNITED STATES TO GARNISHMENT AND SIMILAR PROCEEDINGS FOR ENFORCEMENT OF CHILD SUPPORT AND ALIMONY OBLIGATIONS

"SEC. 459. Notwithstanding any other provision of law, effective January 1, 1975, moneys (the entitlement to which is based upon remuneration for employment) due from, or payable by, the United States (including any agency or instrumentality thereof and any wholly owned Federal corporation) to any individual, including members of the armed services, shall be subject, in like manner and to the same extent as if the United States were a private person, to legal process brought for the enforcement, against such individual of his legal obligations to provide child support or make alimony payments.

"CIVIL ACTIONS TO ENFORCE CHILD SUPPORT OBLIGATIONS

"SEC. 460. The district courts of the United States shall have jurisdiction, without regard to any amount in controversy, to hear and determine any civil action certified by the Secretary of Health, Education, and Welfare under section 452(a)(8) of this Act. A civil action under this section may be brought in any judicial district in which the claim arose, the plaintiff resides, or the defendant resides."

Collection of Child Support Obligations

(b)(1) Subchapter A of chapter 64 of the Internal Revenue Code of 1954 (relating to collection of taxes) is amended by adding at the end thereof the following new section:

"SEC. 6305. COLLECTION OF CERTAIN LIABILITY.

"(a) IN GENERAL.—Upon receiving a certification from the Secretary of Health, Education, and Welfare, under section 452(b) of the Social Security Act with respect to any individual, the Secretary or his delegate shall assess and collect the amount certified by the Secretary of Health, Education, and Welfare, in the same manner, with the same powers, and (except as provided in this section) subject to the same limitations as if such amount were a tax imposed by subtitle C the collection of which would be jeopardized by delay, except that—

"(1) no interest or penalties shall be assessed or collected,

"(2) for such purposes, paragraphs (4), (6), and (8) of section 6331(a) (relating to property exempt from levy) shall not apply,

"(3) there shall be exempt from levy so much of the salary, wages, or other income of an individual as is being withheld therefrom in garnishment pursuant to a judgment entered by a court of competent jurisdiction for the support of his minor children, and

"(4) in the case of the first assessment against an individual for delinquency under a court order against such individual for a particular person or persons, the collection shall be stayed for a period of 60 days immediately following notice and demand as described in section 6303.

"(b) REVIEW OF ASSESSMENTS AND COLLECTIONS.—No court of the United States, whether established under article I or article III of the Constitution, shall have jurisdiction of any action, whether legal or equitable, brought to restrain or review the assessment and collection of amounts by the Secretary or his delegate under subsection (a), nor shall any such assessment and collection be subject to review by the Secretary or his delegate in any proceeding. This subsection does not preclude any legal, equitable, or administrative action against the State by an individual in any State court or before any State agency to determine his liability for any amount assessed against him and collected, or to recover any such amount collected from him, under this section.".

(2) The table of sections for such subchapter is amended by adding at the end thereof the following new item:

"Sec. 6305. Collection of certain liability.".

Amendments to Part A of Title IV

(c)(1) Notwithstanding the provisions of section 402(a) of the Social Security Act, in addition to the amounts required to be disregarded under clause (8)(A) of such section, there is imposed the requirement (and the State plan shall be deemed to include the requirement) that for the 15 months beginning July 1, 1975, in making the determination under clause (7), the State agency shall with respect to any month in such year and in addition to the amounts required to be disregarded under clause (8)(A), disregard amounts payable under section 457(a)(1).

(2) Section 402(a)(9) is amended to read as follows:

"(9) provide safeguards which permit the use or disclosure of information concerning applicants or recipients only to (A) public officials who require such information in connection with their official duties, or (B) other persons for purposes directly connected with the administration of aid to families with dependent children;".

(3) Section 402(a)(10) is amended by inserting immediately before "be furnished" the following: ", subject to paragraphs (25) and (26),".

(4) Section 402(a)(11) is amended to read as follows:

"(11) provide for prompt notice (including the transmittal of all relevant information) to the State child support collection

agency (established pursuant to part D of this title) of the furnishing of aid to families with dependent children with respect to a child who has been deserted or abandoned by a parent (including a child born out of wedlock without regard to whether the paternity of such child has been established);".

(5) Section 402(a) is further amended—

(A) by striking out "and" at the end of paragraph (23);

(B) by inserting immediately before the first word in paragraph (24) the following: "provide that"; and

(C) by striking out the period at the end of paragraph (24) and inserting in lieu thereof a semicolon and the following:

"(25) provide (A) that, as a condition of eligibility under the plan, each applicant for or recipient of aid shall furnish to the State agency his social security account number (or numbers, if he has more than one such number), and (B) that such State agency shall utilize such account numbers, in addition to any other means of identification it may determine to employ in the administration of such plan;

"(26) provide that, as a condition of eligibility for aid, each applicant or recipient will be required—

"(A) to assign the State any rights to support from any other person such applicant may have (i) in his own behalf or in behalf of any other family member for whom the applicant is applying for or receiving aid, and (ii) which have accrued at the time such assignment is executed,

"(B) to cooperate with the State (i) in establishing the paternity of a child born out of wedlock with respect to whom aid is claimed, and (ii) in obtaining support payments for such applicant and for a child with respect to whom such aid is claimed, or in obtaining any other payments or property due such applicant or such child and that, if the relative with whom a child is living is found to be ineligible because of failure to comply with the requirements of subparagraphs (A) and (B) of this paragraph, any aid for which such child is eligible will be provided in the form of protective payments as described in section 406(b)(2) (without regard to subparagraphs (A) through (E) of such section); and

"(27) provide, that the States have in effect a plan approved under part D and operate a child support program in conformity with such plan.".

(6) (A) Section 403 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"(h) Notwithstanding any other provision of this Act, the amount payable to any State under this part for quarters in a fiscal year shall with respect to quarters beginning after December 31, 1976, be reduced by 5 per centum of such amount if such State is found by the Secretary as the result of the annual audit to have failed to have an effective program meeting the requirements of section 402(a)(27) in any fiscal year beginning after September 30, 1976 (but, in the case of the fiscal year beginning October 1, 1976, only considering the second, third, and fourth quarters thereof).".

(B) Section 404 of such Act is amended by adding at the end thereof the following new subsections:

"(c) No State shall be found, prior to January 1, 1977, to have failed substantially to comply with the requirements of section 402(a)(27) if, in the judgment of the Secretary, such State is making a good faith effort to implement the program required by such section.

"(d) After December 31, 1976, in the case of any State which is found to have failed substantially to comply with the requirements of section 402(a)(27), the reduction in any amount payable to such State required to be imposed under section 403(h) shall be imposed in lieu of any reduction, with respect to such failure, which would otherwise be required to be imposed under this section."

(7) Section 406 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"(f) Notwithstanding the provisions of subsection (b), the term 'aid to families with dependent children' does not mean payments with respect to a parent (or other individual whose needs such State determines should be considered in determining the need of the child or relative claiming aid under the plan of such State approved under this part) of a child who fails to cooperate with any agency or official of the State in obtaining such support payments for such child. Nothing in this subsection shall be construed to make an otherwise eligible child ineligible for protective payments because of the failure of such parent (or such other individual) to so cooperate.".

(8) Section 402(a), (17), (18), (21), and (22), and section 410 of such Act are repealed.

Conforming Amendments to Title XI

(d) Section 1106 of such Act is amended—

(1) by striking out the period at the end of the first sentence of subsection (a) and inserting in lieu thereof the following: "and except as provided in part D of title IV of this Act.";

(2) by adding at the end of subsection (b) the following new sentence: "Notwithstanding the preceding provisions of this subsection, requests for information made pursuant to the provisions of part D of title IV of this Act for the purpose of using Federal records for locating parents shall be complied with and the cost incurred in providing such information shall be paid for as provided in such part D of title IV."; and

(3) by striking out subsection (c).

Authorization of Appropriations

(e) There are authorized to be appropriated to the Secretary of Health, Education, and Welfare such sums as may be necessary to plan and prepare for the implementation of the program established by this section.

Effective Date

(f) The amendments made by this section shall become effective on July 1, 1975, except that section 459 of the Social Security Act, as added by subsection (a) of this section shall become effective on January 1, 1975, and subsection (e) of this section shall become effective upon the date of enactment of this Act.

Approved January 4, 1975.

FILED

FEB 24 1975

MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

****

No. 73-6033

****

SHARON ROE AND DOROTHY POE, ON BEHALF OF THEMSELVES AND OTHERS SIMILARLY SITUATED, APPELLANTS

VS.

NICHOLAS NORTON, INDIVIDUALLY, AS COMMISSIONER OF WELFARE OF THE STATE OF CONNECTICUT, AND ON BEHALF OF OTHERS SIMILARLY SITUATED, APPELLEE

****

ON APPEAL FROM THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

****

SECOND SUPPLEMENTAL BRIEF OF APPELLANTS

****

FRANK COCHRAN
CONNECTICUT CIVIL LIBERTIES UNION FOUNDATION, INC.
57 Pratt Street
Hartford, Connecticut

ATTORNEY FOR APPELLANTS

Appellants wish to notify the Court of 1974 amendments to several Connecticut statutes involved in this case. The amendments are of marginal if any relevance to the issues raised in this appeal, and are noted here for the single purpose of updating the record.

Public Act (P. A.) 74-183, effective January 1, 1975, consolidated what had been the Circuit Court into the Court of Common Pleas. Thus, all matters over which the Circuit Court had previously had jurisdiction are now brought before the Court of Common Pleas. Thus, petitions under the statute at issue, Connecticut General Statutes (C. G. S.) Section 52-440b, are now brought to the Court of Common Pleas. The statute now reads:

> (a) If the mother of any child born out of wedlock, or the mother of any child born to any married woman during marriage which child shall be found not to be issue of the marriage terminated by a divorce or dissolution decree or by decree of any court of competent jurisdiction, fails to or refuses to disclose the name of the putative father of such child under oath to the welfare commissioner, if such child is a recipient of public assistance, or to a selectman of a town in which such child resides, if such child is a recipient of general assistance, or otherwise to a guardian or guardian ad litem of such child, such mother may be cited to appear before any judge of the ~~circuit~~ court of common pleas and compelled to disclose the name of the putative father under oath and to institute an action to establish the paternity of said child.
>
> (b) Any woman who, having been cited to appear before a judge of the ~~circuit~~ court of common pleas pursuant to subsection (a), fails to appear or fails to disclose or fails to prosecute a paternity action may be found to be in contempt of said court and may be fined not more than two hundred dollars or imprisoned not more than one year or both.

Jurisdiction over support petitions brought under C.G.S. Section 17-326 (P. A. 74-183, Section 216) or 17-324 (P.A. 74-183, Section 217) are also brought to the Court of Common Pleas, and all circuit court judges become judges of the Court of Common Pleas.

Section 54-91a, which provided for appointment of counsel in criminal matters pending in the circuit court was repealed and replaced by P. A. 74-317 Section 7, which authorizes appointment of a public defender in the Court of Common Pleas to represent indigents in " any criminal action, in any habeas

corpus proceeding arising from a criminal matter, in any extradition proceeding or in any juvenile court matter..." There remains no statutory authority for appointment of counsel for mothers summoned under Section 52-440b, however under C. G. S. Section 45-54 there may now be such appointment, at the discretion of the judges, for children.

APPELLANTS

BY _____
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THEIR ATTORNEY

This is to certify that on the 24th day of February, 1975, copies of the foregoing Second Supplemental Brief of Appellants were mailed postage prepaid, and/or delivered personally to Carl Ajello, Attorney General by his Assistant Attorney General Michael Anthony Arcari, 90 Brainard Road, Hartford, Connecticut, and David Rosen and Edwar Dolan, Rosen and Dolan, 265 Church Street, New Haven, Connecticut.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

NO. 73 - 6033

SHARON ROE AND DOROTHY POE, on behalf of themselves and others similarly situated,

APPELLANTS,

v.

NICHOLAS NORTON, individually, as Commissioner of Welfare of the State of Connecticut, and on behalf of others similarly situated,

APPELLEE,

ON APPEAL FROM THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

SUPPLEMENTAL BRIEF OF CHILDREN OF APPELLANTS

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STATEMENT

The Court at oral argument granted counsel permission to file a supplementary brief addressing the relevance to this case of the principles enunciated in Younger v. Harris, 401 U.S. 37 (1971).

The issue arises because the federal complaint in this case was filed shortly after the named appellant mothers were served with rules to show cause commanding their appearance at state court proceedings under the challenged statute, Conn. Gen Stats. §52-440b. These state court proceedings have been stayed until the present in order that the federal issues may be disposed of in the federal forum. (Complete records of the state court proceedings have been appended to this brief as Appendix A).

The District Court did not address itself to either the Younger doctrine or the somewhat related question of abstention; nor were these issues raised by any of the parties below or in this Court. This Brief addresses first the abstention issue, then the Younger doctrine.

ARGUMENT

I. NO UNSETTLED QUESTION OF STATE LAW MAKES ABSTENTION APPROPRIATE.

The Pullman abstention doctrine, Railroad Comm'n. v. Pullman Co., 312 U.S. 496 (1941), is an equitable doctrine counselling federal courts to decline to grant relief when state court interpretation of state law may make unnecessary a federal constitutional adjudication. The essential predicate to "Pullman abstention" is a federal claim which turns on a "state statute the meaning of which is unclear under state law." Harris County Commissioners Court v. Moore, 43 L.W. 4222, 4225 (Feb. 18, 1975). That predicate is absent here.

The suggestion was made at oral argument that in order to save the statute from constitutional attack, Connecticut courts might read it to require the appointment of a guardian ad litem for the child. Tr. Oral Arg. 32. Such a construction is neither warranted by the statute nor sufficient to save its constitutionality. Nothing on the face of the statute suggests such a requirement. No judge who has applied the statute has read it into the statute, so far as counsel is aware. And the origin of the statute casts grave doubt on the theory that such a requirement was intended by the legislature. At the time the statute was passed, jurisdiction over its enforcement was conferred on the circuit court, the only Connecticut trial

court which was not authorized by statute to appoint guardians ad litem for minors who might be affected by pending litigation. See the children's original Brief at 30. While disclosure proceedings have recently been transferred to the court of common pleas, whose judges may appoint guardians ad litem, that change is a result of the abolition of the circuit court, not a change in the legislative policy embodied in §52-440b. Where children have an interest in proceedings in probate court or juvenile court, a guardian must be appointed to protect their interests, Id., but in a proceeding in the court of common pleas the appointment of a guardian is still merely discretionary. Conn. Gen Stats §45-54.

This discriminatory failure to require representation of the interests of the child renders §52-440b unconstitutional on its face. To save the statute, the state courts would be required effectively to rewrite it. Abstention, in such circumstances, is not appropriate. In Wisconsin v. Constantineau, 400 U.S. 433 (1971), this Court rejected the argument that abstention would be appropriate in order to permit state courts to read notice and hearing provisions into a statute which on its face appeared to contain none. So it is here.

Nor would the proposed construction render the statute constitutional. Children on welfare are deprived not only of representation accorded other illegitimate children at a disclosure hearing but of a far more valuable right: the right to have their interests control whether such a hearing will be held at all. In the case of children not on welfare, the

child's guardian or guardian ad litem determines whether or not to bring a disclosure proceeding. In the case of a child on welfare, the welfare commissioner refers every case of a mother who refuses to disclose to a private attorney, whom he then pays if and only if the mother either discloses or is brought to court. Appendix to this Supplemental Brief (hereinafter SBApp.) at 56, 80-81, 90, 124.* Even if a guardian ad litem were regularly appointed to represent the child in disclosure proceedings, the child on welfare would suffer this important and unjustifiable discrimination.

The State has not attempted to justify discrimination against illegitimate children on welfare by its interest in recouping support payments made to those children. Instead, all agree that the controlling interest in the statutory scheme ought to be the interests of the child. See, e.g., Brief of the Appellee at 1, 14, 21, 56; Tr. Oral Arg. 54-55, 57. Since the State asserts no interest in recoupment which sacrifices the best interests of the child whose mother is compelled to make disclosure, this case is analytically close to Jimenez v. Weinberger, 94 S.Ct.2496 (1974), and it may be said here as there that, "Accepting this [articulated government] view of the relevant provisions of the Act, we cannot conclude that the purpose of the [enactment] is to achieve a necessary allocation of finite resources and, to that extent, Dandridge [v. Williams, 397 U.S. 471 (19)] is distinguishable and not controlling." 94 S.Ct. at 2500.

*Three separate appendices are cited in this Brief, the single Appendix ("App."), the appendix to the children's original Brief ("Br. App.") and the appendix to this Brief ("SBApp.").

The State's position is apparently that disclosure is always in the interest of the child. Brief of the Appellee at 1, 14, 21, 56; Tr. Oral Arg. 54-55; see Brief of Children of Appellants at 29-30 n.14. But this position amounts to an irrebuttable presumption applied selectively to illegitimate children on welfare. Only children on welfare have their mothers brought into court despite strong contrary reasons. For example, the children may be developing a relationship with a stepfather or adoptive father that the proceeding would disrupt, App.41; or ~~would harm~~ disclosure that they were born of an incestuous relationship, App.45, or that their mother does not know their father's identity, Br.App. 12a-17a, 28a-30a, 35a-38a, or that their father is in prison or a mental institution; or would have no prospect of receiving support from their putative father even if his name were disclosed. In such circumstances a child not on welfare is protected from the intrusion of disclosure by the discretion of his guardian. A child on welfare, however, is subject to the State's presumption that disclosure would nevertheless serve his interest. From the perspective of the policy articulated by the State, the discrimination worked by the statute is plainly irrational.

The classification is not even justifiable on the grounds of the State's own fiscal interest. For with respect to that interest, the classifications established by the statute are both underinclusive and overinclusive. The mothers of children who have just left the welfare rolls may not be proceeded against by the welfare commissioner although the children's fathers are liable to the State for past support and lying-in

expenses, Conn. Gen. Stats. §52-442. On the other hand, the mother of a child on welfare may be proceeded against although the mother makes reliable arrangements to leave the welfare rolls and repay the Department for past support. Tr. Oral Arg. 45-46. Likewise, the mother of a child on welfare is required to identify the putative father of the child no matter how strong her showing that no support is or will be available from the father or that the State's declared interest in the well-being of the child will be thwarted by disclosure rather than advanced.

The plain constitutional flaws in this statute cannot be saved by any plausible construction. For that reason, abstention would serve no useful purpose, while it would cause serious and irreparable injury to the children.

Moreover, additional considerations counsel against abstention in this case. As the Court said very recently,

> We have repeatedly warned, however, that because of the delays inherent in the abstention process and the danger that valuable federal rights might be lost in the absence of expeditious adjudication in the federal court, abstention must be invoked only in "special circumstances," see Zwickler v. Koota, 389 U.S. 241, 248 (1967), and only upon careful consideration of the facts of each case. Baggett v. Bullitt, 377 U.S. 360, 375-379 (1964), Railroad Comm'n. v. Pullman Co. supra, 312 U.S. at 500.

Harris County Comm'rs. Court v. Moore, 43 L.W. 4222, 4224 (Feb. 18, 1975). In Hostetter v. Idlewild Liquor Corp., 377 U.S. 324 (1964), the Court delineated some of the factors which would lead it not to order abstention.

> Unlike many cases in which abstention has been held appropriate, there was here no danger that a federal decision would work a disruption of an entire legislative scheme of regulation. We therefore accept the District Court's decision that abstention was unwarranted here, where neither party requested it and where the litigation had already been long delayed....

377 U.S. at 329 (footnote omitted). Each of these factors is present in this case. Invalidating §52-440b on the equal protection grounds asserted by the children would not disrupt any state "scheme of regulation," provision could easily be made for bringing disclosure proceedings in the case of children on welfare with the same safeguards of the childrens' best interests that are now provided for children not on welfare; and indeed the Social Security Act Amendments could provide the state with an alternative means to get information from mothers where warranted. Here also neither party has requested or apparently now wants the court to abstain. And here too litigation has been delayed; two years have elapsed since the filing of the complaint, and abstention necessarily would contemplate a full state trial and appellate proceeding and then a return to the District Court for another hearing presumably to be followed by another, distant, appeal to this Court.

II. THE PRINCIPLES ENUNCIATED IN YOUNGER V. HARRIS DO NOT MAKE DISMISSAL OF THIS ACTION APPROPRIATE.

A. The State Characterizes its Proceeding as Civil.

In Younger v. Harris, 401 U.S. 37 (1971), this Court held that a federal court should not ordinarily issue an injunction to stay a pending criminal proceeding. Because of the strong state interest in prompt enforcement of its criminal laws, a federal court exercising its equitable discretion ought ordinarily to refrain from interfering with a pending criminal case. That principle, however, does not similarly compel restraint with respect to pending civil cases. Younger v. Harris, 401 U.S.at 55n.2 (concurring opinion of Mr. Justice Stewart.) And the state proceedings pending against the mothers in this case are civil in nature.

The State has vigorously maintained, both here and in the District Court, that the proceedings are civil in character. See App. 57; Tr. Oral Arg. 37, 56. Moreover, the contempt proceeding bears important indicia of its civil character. Shillitani v. United States, 384 U.S. 364, 368 (1966); Compers v. Bucks, Stove and Range Co., 221 U.S. 418, 441-445 (1911); In re Nevitt, 117F.451, 458-459 (8th Cir. 1902) Sanborn, J.). A contempt citation under §52-440b results in incarceration not for a fixed term but rather until the prisoner complies with the underlying order by disclosure (with a statutory maximum of one year). App. 57. Thus the purpose of incarceration is purely coercive rather than punitive.

Second, the proceeding is initiated by the state welfare commissioner rather than by a state prosecutor. That is, it is initiated by the government agency that stands to benefit from disclosure, and not by the agency whose function is to vindicate the State's authority. The welfare commissioner is more closely analogous to the private party who initiates a civil contempt proceeding than to the public officer who prosecutes criminal contempt. Third, the State delegates to private attorneys the actual litigation of these contempt proceedings. This system precludes the exercise of prosecutorial discretion that is usual in criminal cases, and indicates that the agency charged with enforcement of the statute does not regard the proceedings as criminal. Fourth, the State does not provide mothers with counsel or jury trial in these proceedings, again suggesting that it regards them as civil rather than criminal. Because these state proceedings are civil rather than criminal, Younger principles should not apply to bar federal declaratory and injunctive relief. See Gibson v. Berryhill, 411 U.S. 564, 576 (1973). See also Klouin v. Dembitz, 489 F.2d 488 (2d Cir. 1973); Conover v. Montemuro, 477 F.2d 1073 (3d Cir. 1973); Lewis v. Kugler, 446 F.2d 1073 (3d Cir. 1973). But see Lynch v. Household Finance Corp., 405 U.S. 538, 561 (1972) (dissenting opinion of Mr. Justice White).

However, even if the Court regards the State proceedings as criminal or extends the Younger principle to civil cases in the cases now sub judice which raise that issue, Hamer v.

Theatres Inc. v. Cryan 365 F.Supp. 1312 (D.N.J. 1973), prob. juris noted 94 S.Ct. 1967 (No. 73-711) (1974); MTM Inc. v. Baxley, 365 F.Supp. 1182 (N.D.Ala. 1973), prob. juris. noted 94 S.Ct. 1559 (No. 73-1119) (1974). Huffman v. Pursue, Ltd., C72-432 (W.D. Ohio, April 20, 1973), prob. juris. noted 94 S.Ct. 1559 (No. 73-296) (1974), it would be inappropriate for several reasons to remit the children and their mothers in this case to illusory state remedies.

(Note to Printer: There should not be so much blank space between paragraphs).

B. The Children Were Not Parties To The State Court Enforcement Proceedings At the Time This Case Was Filed And Heard Below.

It is now established that the pendency of a state proceeding does not preclude a federal court from granting injunctive or declaratory relief against the operation of a state statute if the federal plaintiff is not a party to the pending state proceeding. Roe v. Wade, 410 U.S. 113, 125-27 (1973); Steffel v. Thompson, 415 U.S. 452 (1974). The reason for this rule is that, on one hand, relief for the federal plaintiff does not defeat or impair the State's interest in the integrity of its proceedings to the same extent as would relief for the actual party defendant in the pending state proceeding; and on the other hand, the federal plaintiff's need for relief is greater when he is not a party to the state proceeding because of the lack of an adequate opportunity to present his claims in the state forum.

In Roe, prosecutions were pending under the Texas abortion law against the plaintiff Dr. Hallford. The Court declared that the action should be dismissed as to him but not as to plaintiff Jane Roe, a pregnant woman seeking an abortion as to whom no prosecution was pending. In Steffel, the Court found dismissal improper as to a plaintiff whose claim of standing depended on having picketed with a companion although a prosecution was pending for that picketing against the companion.

In Roe and Steffel, the Court found it decisive that no proceedings were pending in state court as to which the federal plaintiff was a party. Likewise, in this case no proceedings were pending at the time this action was commenced or heard below as to which the children were a party. Under the rule of Steffel and Roe, even if the mothers are barred by Younger from seeking relief in federal court, the children are not.

The state court proceedings were commenced on December 14, 1972, by orders to show cause issued to appellant mothers at the request of appellee, the Commissioner of Welfare. The parties to those actions were the State, in the person of the Commissioner, and the mothers. Both sides were represented by counsel. The children were not parties to the state court actions in form or in fact. They were not named as parties in any pleadings; they were not represented by counsel; and no guardian ad litem was appointed by the circuit court to advocate their interests.*

FOOTNOTE

* Over a year after the entry of the District Court's judgment, shortly before the argument in this Court, undersigned counsel filed an appearance on behalf of the children of appellant mothers in the state court proceedings. This appearance did not make the children parties to the state court proceedings.

Had the children not been welfare recipients, they would have been parties to any state proceeding for disclosure of their father's identity because a proceeding may be brought in the case of a child not on welfare only by the guardian ad litem of the child. The precise discrimination the children have complained of in this case is the absence in the state court proceeding of a guardian or guardian ad litem who can

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while entering an appearance is simply a matter of handing a form to an employee of the clerk of the court, intervention requires a motion and permission of the court to participate as a party, Conn. Gen. Stats. §52-102, Conn. Practice Book Form 243 (1963). No such motion has been made on behalf of the children in the state proceedings, nor has permission to intervene been granted.

The appearance by counsel served an important informational function. It enabled him as part of his representation in federal court to be kept informed of developments in the state cases and to communicate with the state court about the status of the federal court proceedings. But it did not establish his right, or the children's, to participate fully in the state court proceedings by calling or cross-examining witnesses or raising substantive claims.

determine whether litigation is in the child's best interest and represent the child in any litigation. It is the very unconstitutional discrimination complained of which deprives the child on welfare of the party status necessary to vindicate his rights.

Moreover, even were the children to be deemed parties to the state proceedings now, they were not parties at the time the federal action was commenced, counsel was appointed for them in the federal action, the judgment was rendered below, or this Court noted probable jurisdiction. Dismissing their claims at this late date on the ground that they have now become parties to a state proceeding would be wholly inconsistent with "ordinary considerations of economy." Steffel v. Thompson, supra, 415 U.S. 452, 478 (concurring opinion of Mr. Justice White). Dismissal would also penalize the children for attempting to safeguard their stake in the federal court litigation and would undercut the District Court's scrupulous efforts to protect the interests of the children as a class. Had counsel not been appointed by the District Court to protect the interests of the class the children of appellants represent, there would have been no one to appear on behalf of the children in the state court proceeding. It would be ironic for this Court now to hold that action taken by counsel as part of his representation in the federal action, which he was able to take only by virtue of having been appointed to represent the children in the federal action, provides grounds to dismiss that action and with it the claims of the entire class of children counsel represents.

The consequences of the discriminatory denial of party status to illegitimate children on welfare are, first, that the children have no control over the course of the state court proceedings. They cannot assert their own rights on their own behalf. The most vital claims of the children may indeed not be presented at all in the state proceeding, since it is doubtful that the mothers have standing as state court defendants to assert the constitutional rights of their children in resisting disclosure under Section 52-440b. Williams v. Shapiro, 4 Conn. Cir. 449, 454-455, 234 A.2d 376 (1967) (Mother may not assert claim that denial of AFDC benefits abridged her child's constitutional rights); Coyle v. Housing Authority, 151 Conn. 421, 198 A.2d 709 (1964). Without the child participating as a party in the state court litigation, the child's rights will be unprotected and, therefore, not vindicated.

The District Court's treatment of the interests of the children is instructive. The court found that the children's interests could not properly be represented by the mothers or by the State. The court therefore appointed separate counsel for the children and for class action purposes created two subclasses:

(1) those mothers receiving AFDC assistance who refuse to comply with §52-440b; and

(2) the illegitimate children of those mothers.

365 F.Supp. 65, 69.

The Court below took these measures because it found that the children were entitled to representation and party status; in fact it deemed them "not only proper, but necessary parties." These findings of the District Court establish that proper representation of the children and vindication of their rights requires full party status and representation by counsel. The children had neither of these until the District Court appointed counsel for them in the federal action.

The Chief Justice in his separate opinion in Allee v. Medrano, 416 U.S. 802 (1974) suggests that in some situations it would be proper to "impute the state criminal prosecution of one who is not a federal plaintiff to one who is." 416 U.S. at 832 n.8. The Chief Justice argued that "any other result would allow the easy circumvention of Younger by individuals who could assert their claims of First Amendment violations through an unincorporated association of those same individuals if the association is immune from Younger burdens," 416 U.S. at 381, and therefore proposed a test based on the factors of "joint activity and common interest." 416 U.S. at 832 n.8. But that test is clearly not met here. For, as the district court found, the interests of the children are different from those of their mothers. Although mothers and children may both be harmed by the operation of the statute, the harms to one are distinct from the harms to the other, as the rights they assert are distinct.

Finally, even if the children of the named appellant mothers were regarded as parties, they represent a large class of children who are not parties. The federal Court action was certified as a class action as to the children, who represent the class of all illegitimate children on welfare whose mothers resist disclosure or prosecution under Section 52-440b. See 365 F.Supp. at 69. Should this action be dismissed on Younger grounds, no other infant children would, as a practical matter, be able to come into federal court as more appropriate plaintiffs. As infants, they are incapable of asserting their grievances, and the very essence of their complaint is that they are unrepresented and not parties in the state court proceedings. Because of the special inability of infant children to assert their own rights, it is especially important that the representative children be permitted to vindicate the interests of the class in this federal court action.

C. The State Court Proceeding Is Inadequate To Protect The Children From Serious, Irreparable Injury

1. The State Proceeding Itself Operates To Inflict Irreparable Injury On The Children

Even if the children were represented in the state proceedings, they would be unable to obtain relief as complete as that available in federal court for two reasons. First, the very nature of the state proceeding, by itself, injures the child. Second, because the state proceedings may only be instituted against the mothers of children not on welfare if there is a determination that doing so is in the best interests of the child, and because no such determination is made for welfare children, forcing children on welfare to go through these state proceedings to vindicate their rights itself discriminates against them.

The state proceeding jeopardizes the child's relationship with his mother because it subjects her to anxiety and humiliation on the child's account for which she may at least on an emotional level hold the child responsible. Her emotions will affect her child and diminish his own feelings of self-worth and trust. See App. 65, 128. The demeaning nature of the proceeding is evident from transcripts, reproduced in the Appendix to the children's original Brief, which contain inquiries such as the following, at Br. App. 36a:

THE COURT: You didn't know the identity of the father?

THE WITNESS (MOTHER): No, I don't know who the father is.

THE COURT: Why?

THE WITNESS: Because I was going out with more than one Guy at the time.

THE COURT: You were what?

THE WITNESS: I was going out with more than one guy at the time.

THE COURT: You were going out with more than one guy at the time. Well that indicates then that you were having relations with a number of persons.

THE WITNESS: Yes.

THE COURT: Well, the name to attach to that is that you were promiscuous. Do you know what that means?

THE WITNESS: No.

As affidavits and depositions below demonstrated, the process itself often exacerbates strain between the parents as well, for which the young child will often blame himself because he feels that "he is in fact the cause of tension between them." App. 128. See App. 64-65.

The child will suffer devastating irreparable injury if his mother is incarcerated while attempting to vindicate her rights in the state courts. In that event, the very young child of an incarcerated mother is likely to suffer grave psychological harm. App. 65-66. The record, and other medical studies, show that the sense of loss a child feels when separated from his mother at an early age may stay with the child for the rest of his life. Id.; see Brief of Amici Curiae at 16-21. If a mother is relegated to State court to protect her rights, and is incarcerated pending appeal * she is faced with a Hobson's

* As she probably will be, see p. 24, infra.

choice: whether she chooses to remain in prison, or to dissolve the putative father's name, which she earlier decided was against the best interests of the child, the child will be harmed.

These risks of damage to the well-being of an infant or young child should be considered the type of "irreparable injury" which permits an exception to the Younger rule, see Gibson v. Berryhill, 411 U.S. 564 (1973), particularly here where that injury is a direct consequence of the discrimination against children on welfare which permits actions to be instituted and prosecuted under Section 52-440b without regard to their well-being. Remitting these children to the state court proceedings exposes them to these injuries. Had they not been receiving welfare there would have been no such exposure because there would have been no proceeding unless their guardian or guardian ad litem determined that a proceeding was in the child's interest. For this Court to require dismissal under Younger would be to increase the discriminatory burden upon the children by exposing them to yet another proceeding to which they would not have been exposed had they not been on welfare. Younger does not require such a result.

2. The State Court Proceeding Does Not Provide An Adequate Opportunity To Raise And Have Timely Decided The Federal Issues Involved

In Gibson v. Berryhill, 411 U.S. 564 (1973) this Court held that the principles enunciated in Younger v. Harris and

its proposition did not preclude federal courts from acting where the District Court had found that the state remedy was defective. In that case the state administrative tribunal before which a proceeding was pending was found by the court to be biased against the federal plaintiffs. This defect was not cured by the availability of de novo judicial review because the District Court had found that an adverse administrative finding would irreparably injure the federal plaintiffs.

Gibson requires that this action not be dismissed, for two reasons. First, the contempt proceeding now pending against the appellant mothers will not provide a competent forum for adjudication of the federal claims of the mothers or children. Second, mothers can secure appellate review of a contempt finding only at a cost of irreparable injury to themselves and, especially, their children.

The Court of Common Pleas, the tribunal before which the state proceedings are now pending, is very likely to decline to adjudicate the claim that the statute is facially unconstitutional. It is Connecticut doctrine that legislative enactments ordinarily should be declared unconstitutional only by courts of plenary jurisdiction and not by inferior courts, of which the court of common pleas is one.* This doctrine was first enunciated by the Connecticut Supreme Court in State v. Muolo, 119 Conn. 321 (1935). The Court there said, criticizing an inferior court for declaring a state statute

*State v. Van Camp, 6 Conn. Cir. 609, 616, 281 A.2d 584 (Cir. Ct. App. Div. 1971); cf. Szarsek v. Warden, Vol. XXXVI, No. 4 Conn. L.J. 1, 12 (July 23, 1974); Walkinshaw v. O'Brien, 130 Conn. 122 (1943).

unconstitutional,

> In the absence of constitutional or statutory prohibition, any court has power to pass on the constitutionality of a statute... but a proper regard for the great coordinate branch of our government, the legislative, and for the preservation of the respect of our citizens, who are apt to look askance upon a decision of a court...limited in its jurisdiction... holding invalid the considered legislative judgment, dictates that such a court should take such action only upon the clearest ground or where the rights of litigants make it imperative that it should do so. Otherwise it is better...to leave the decision to our higher courts, to which the matter may be brought by appeal or otherwise. 119 Conn. at 326

The Muolo doctrine has been applied by lower Connecticut courts to short-circuit their review of challenged legislative enactments, either by refusing entirely to address the merits of a constitutional claim, or by rejecting the claim on the ground that its merit is not entirely free from doubt. See, e.g., State v. Van Camp, 6 Conn. Cir. 609, 281 A.2d 584 (Cir. Ct. App. Div. 1971); State v. Townsend, 6 Conn. Cir. 71, 265 A.2d 512 (6th Cir. 1969); Williams v. Shapiro, 4 Conn. Cir. 449, 452, 234 A.2d 376 (6th Cir. 1967); State v. Anonymous, 6 Conn. Cir. 402, 404-5, 275 A.2d 620 (Cir. 1971-4); State v. De Angelo, SBApp. 41a (unreported); State v. Parks, SBApp.37a (unreported); State v. Agresta, SBApp. 38a (unreported). Either approach in the state proceedings against appellant mothers would delay, or preclude, a complete adjudication of the constitutional claims the mothers and children have presented in their federal court action.

The State has in fact urged the state tribunal in the proceedings now pending against the named appellants to refuse to consider constitutional objections to §52-440b, on the ground that Muolo requires such objections to be deferred for consideration on appeal. The State's position in the proceedings against appellant mothers is that the trial court "should not

rule on the constitutionality of statutes." SBApp. 29a. If the federal plaintiffs are remitted to their state remedies, it is unlikely that the trial court will provide the "competent state tribunal" in which appellant mothers of children will have "the opportunity [contemplated in Younger] to raise and have timely decided...the federal issues involved," Gibson v. Berryhill, supra, 411 U.S. at 577.

The second part of the Gibson analysis turned on the adequacy of appellate review to undo the damage done by an adverse adjudication rendered by the incompetent tribunal. Here a contempt finding would predictably result either in disclosure, which might work irreparable harm, or in incarceration of the mothers for a substantial period of time, which would work a deprivation of maternal care on the children that appellate review cannot undo. Direct review of a contempt finding in a Section 52-470b proceeding is available if at all only by Writ of Error. Whiteside v. State, 148 Conn. 77 (1961); Goodhart v. State, 84 Conn. 60 (1911); Baldwin v. Miles, 58 Conn. 496 (1890).* There is

* It is unclear that even a Writ of Error is now available to mothers held in contempt. The Connecticut Legislature as part of a court reform act has recently abolished the statutory basis for a Writ of Error from the court of common pleas. Conn. Public Acts No. 74-183, 595. If the Writ is unavailable, the sole method of review is now habeas corpus, see, e.g., McCarthy v. Clancy, 110 Conn. 482 (1929); In re Clark, 65 Conn. 17 (1894), as to which bail is not required, the actual imprisonment of the mother is a necessary predicate, Appuzzo v. Jarvis, 26 Conn. Sup. 430, 226 A.2d 116 (1965), and review by the Connecticut Supreme Court is discretionary, Conn. Gen. Stats. 52-470.

no assurance whatever that a trial court would permit a mother bail pending appellate review; to the contrary, Connecticut's view that 52-440b is civil and coercive in nature support that no bail may be granted. See, State ex rel Carter v. York, SBApp 42a (unreported) (D. Conn. 1970), rev'd/4/10 F.2d 1179 as modified (2d Cir. 1970). While there are provisions for expedited appeal in Connecticut, Conn. Gen. Stats. 52-265a, expedition is at the discretion of the Supreme Court, and is by no means always granted. It was denied, for example, in the Carter case, supra, which involved an application for review of a finding of civil contempt for refusal to testify. See SBApp. . Even if review is expedited, children may still be deprived of the presence and care of their mothers and sole guardians for weeks or months while their mothers are incarcerated pending appellate review. The harm Sharon Roe's two and one-half year old daughter would suffer from such a separation is surely at least as grave as the harm the optometrists in Gibson incurred by temporary suspension of their licenses and attendant publicity, 411 U.S. at 495-496.

Like the federal plaintiffs in Gibson, in short, the mothers and children here have a remedy in state proceedings which is available only at the cost of incurring serious irreparable injury because of the incompetency of the original tribunal to give them the relief to which they are entitled.

D. No Younger Claim Was Made By The State, And The State Now Urges The Court To Decide This Case On The Merits

The State did not urge dismissal under Younger below,

but pressed for an adjudication on the merits. In this Court the Younger issue was not raised by the State. Counsel is now informed that the State's position is that this Court should not direct dismissal under Younger or Pullman abstention, but should reach and resolve the substantive constitutional issues.

The state judiciary has likewise thought it appropriate to await a federal determination of the federal claims before requiring disclosure. Although no injunction has ever issued against the state proceedings; they have been stayed during the entire pendency of the federal action, as the state court files reveal. SBApp. 3a, 12a-13a. The most recent state court order, entered with the consent of the State, is that these cases be marked "off with the privilege of recall -- awaiting the U.S. Supreme Court decision in Roe vs. Norton." SBApp. 3a, 13a (This notation means that while a new action need not be filed, the case has been placed in a dormant status until reactivated at the request of one of the parties.)

This Court has previously found the wishes of the parties that the merits be reached sufficient reason not to address Younger issues. Sosna v. Iowa, 95 S.Ct. 553, 556 n. 3, (1975). This policy is required by Younger, which "rests heavily on federal deference to state administration of its own statutes...Cf. Hostetter v. Idlewild Bon Voyage Liquor Corp., 377 U.S. 324, 329 (1964)." California v. LaRue, 409 U.S. 109, 124-25 n. 2 (1972) (dissenting opinion of Mr. Justice Marshall). Rather than being an abrasive disruption of state proceedings, a federal action may serve important state interests by providing a relatively speedy, authoritative

ruling on the legitimacy of a state program challenged as inconsistent with federal law. While state courts are bound by the supremacy clause to interpret and apply federal law relevant to issues before them, federal courts may appropriately be recognized as expert in federal law as state courts are expert in state law. See, e.g., Propper v. Clark, 337 U.S. 472 (1948). Additionally, a State may have, and indeed does have here, an interest in a comprehensive ruling available in a class action proceeding which would not be available in a state court proceeding under §52-440b. Therefore when a State seeks an adjudication on the merits of a federal claim in federal court, the principle point of Younger is inapplicable and hence without force.

CONCLUSION

The related doctrines of Pullman abstention and Younger restraint were designed to further interests that are conspicuously absent from this case. We urge the Court to decide the merits.

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CERTIFICATION

This is to certify that a copy of the foregoing Supplemental Brief was mailed First Class Mail, Postage Prepaid, by depositing same in a United States Mail Box on March 7, 1975, to each of the following:

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

NO. 73-6033

SHARON POE AND DOROTHY POE, on behalf of themselves and others similarly situated,

APPELLANTS,

v.

NICHOLAS NORTON, individually, as Commissioner of Welfare of the State of Connecticut, and on behalf of others similarly situated,

APPELLEE

ON APPEAL FROM THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

CLOSING BRIEF OF APPELLANT MOTHERS

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MOTHERS

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Appellant mothers concur largely with the positions taken by counsel for the children in their supplemental brief, and add this closing statement showing that sound judicial policy also dictates decision of their claims on the merits by the federal courts. The appellant class of mothers respectfully urges the Court to reverse the District Court decision denying them requested declaratory and injunctive relief.

Appellants respectfully submit that neither comity nor abstention, both equitable doctrines molded in a case by case fashion to resolve sometimes delicate questions of federalism, should be applied to this case, and that the practical realities necessitate decision on the merits in the federal courts. As the Court stated in Lemon v. Kurtzman 411 U.S. 192, 201:

> In equity, as nowhere else, courts eschew rigid absolutes and look to the practical realities and necessities inescapably involved in reconciling competing interests,...

This brief will examine those practical realities of federalism involved in this case.

A. COMITY

Younger v. Harris 401 U.S. 37, 27 LEd2d 669 (1971) and Samuels v. Mackell 401 U.S. 60, 27 LEd2d 688 (1971) did not remove federal District Court jurisdiction over constitutional questions pending in proceedings in state courts. Nor did they require nonintervention in all cases in which such questions were pending. Rather, both directed District Courts to predicate exercise of their equitable jurisdiction on the familiar principle that a court should not exercise its equitable jurisdiction except in the absence of an adequate remedy at law. The Court's application of this familiar doctrine to instances in which Federal Courts are asked to enjoin state criminal proceedings was to direct the District Courts to defer to those pending state criminal proceedings they found adequately designed to vindicate the federal rights in question, with some exceptions. See also Gibson v. Berryhill 411 U.S. 564 (1973). At base it is a doctrine of deference to

the good faith and competence of state judges in those cases where the latter have power to act effectively.

Appellants submit that it is inappropriate for the Court to decline to exercise jurisdiction over this case on the basis of comity, for several reasons. In the cases of the two plaintiff mothers here, the trial courts (state) have shown no desire to decide the cases. On the contrary, they have twice granted stays on the representations of both counsel that federal constitutional questions of fundamental relevance were pending in the federal courts[1]. And at present the cases have been removed to an inactive list to permit final determination of those issues by this court. Children's S.B. App. 3a, 13a. Thus the state courts do not consider federal decision to be unwarranted interference with their pending proceedings. On the contrary, although they have not predicated the stays explicitly on the doctrine of trial court incompetence, they have welcomed the federal courts' exercise of their civil rights act jurisdiction. Counsel for the Appellee apparently concurs with the mothers and childrens desire for a definitive ruling. See Children's S.B, 25. There is nothing in the District Court record which supports the inference that counsel there, who was an experienced federal litigator, did not desire adjudication on the merits[2]. On the contrary, the Answer denied only the conclusions drawn in the complaint; further it raised no questions of comity or of abstention. App, 55.

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1. At oral argument February 25, 1975 the undersigned represented that the mothers had placed the constitutionality of the statute in question in state court. In fact, a review of the records show that this was done only as a part of motions to stay proceedings, and not by formal responsive pleading. In responding the the motion for a stay, the attorney for the Commissioner raised the question of the state court's competence to declare the statute unconstitutional. Children's S.B. Ap., 28a.

2. Nor is there a possibility that either court or defendant was misled about the pendency of the petitions since appellants alleged the same in their complaint, App. 6, admitted, App. 55.

And the state's brief here, like its brief below, is confined exclusively to the merits. Since the purpose of comity is deference to available state proceedings, and the state proceedings here have claimed no such deference, appellants can perceive no reason this Court should not decide the merits, a position apparently concurred in by Connecticut's judiciary and executive branch. See Sosna v. Iowa __U.S.___, 42 LEd2d 532, n.3, (1975).

Nor is it apparent that the considerations of federalism informing the comity doctrine require any deference to state courts where issues arising under the supremacy clause, viz. the claims here arising under the Social Security Act, are made. Even if Younger questions could not generally be waived, appellants can see no reason to fail to recognize waiver where, as here, supremacy clause issues may well be dispositive.

Even if there were disagreement between the parties over the comity question, or a waiver were not recognized, this is not an appropriate case to preclude federal decision based on the Younger doctrine. The District Court found, without objection that the case was properly maintainable as a class action under Rule 23(b)(2), Federal Rules of Civil Procedure (F. R. Civ. P), and designated subclasses of mothers and children. Thus it found appellants to be appropriate representatives of a subclass of mothers which it defined without regard to the pendency of state proceedings, App, 131. To deprive those members of the class not yet parties to a state proceeding of an adjudication as a class in this action would be contrary to the civil rights act and Rule 23 where there is no conflict of interest among class members and no apparent doubt of the competence with which the issues have been presented. Equally significant, it would merely necessitate a new federal action by other members of the class, great duplication of effort by all concerned, some delay,

and (given the District Court's decision below) , almost certain review by this Court.

The invasion of the mothers constitutional right to privacy accomplished by Section 52-440b occurs well before petitions to compel disclosure are brought in state court, with the mandatory decision of the Welfare Department to intervene, App. 11. 'Thus a defence to such a petition could never, because of the nature of the right, and of the violation, vindicate the right. This is so quite apart from the actual adequacy of state remedies in the pending proceeding. And the remedies available in this case are no more adequate to protect the mothers rights than they are to protect the interests of children. See Children's S.B. 21-24.

Refusal of the federal courts to decide this case under the Younger doctrine is also inappropriate where, as here, the plaintiffs attack the public nature of and failure to provide adequate procedures in, that very state proceeding which is pending. This is particularly true where the state courts have held, as Connecticut's have, that the type of proceeding in question is not subject to due process safeguards. See In re Clark 65 Conn. 17, 31 Atl 522 (1895).

Finally, the state has consistently maintained that petitions under C.G.S. Section 52-440b are civil in nature [3]. Even if that conclusion were incorrect, it would nonetheless serve to indicate that Connecticut has ascribed a lesser importance to unencumbered enforcement than would be the case if it denominated such petitions civil. Cf Younger v. Harris (supra) at 55, n.2. (Stewart, J, concurring). To date this Court has declined to extend the Younger doctrine to civil cases. Appellants submit that the present case is a singularly inappropriate one for such an

3. Counsel reiterated this position at oral argument.

extension, for all of the several reasons outlined above.

B. ABSTENTION

The reasons cited for indicating that federal courts should abstain from decision on federal constitutional questions within their jurisdiction are the possibility of an adjudication of a state law question by state courts so as to 1) obviate the necessity for any federal constitutional adjudication, Railroad Commission v. Pullman Co. 312 U.S. 496, 85 LEd 971, or 2)significantly modify the federal claim, Harris County Commissioners v. Moore __U.S. ___, 43 LW 4222 (1975). To the extent that it relies on assumed superiority of state courts to determine questions of state law, the considerations set out regarding comity are equally applicable to Pullman abstention .

This Court has on at least two occasions declined, after raising an abstention question sua sponte, to look behind a desire of the parties for decision on the merits, Hostetter v. Idlewild Liquor Corp. 377 U.S. 324 (1964), Broadrick v. Oklahoma 413 U.S. 601, 37 LEd2d 830 (1973). A sound reason for that policy is that unless a party raises such questions, the Court can generally assume that there is none dispositive of the case and the parties cannot be assumed to be relying on any particular interpretation of state law. In this case neither the State of Connecticut nor the Court raised any questions of state law which could conceiably dispose of the case favorably to plaintiffs without adjudication of the federal questions. Nor has there been any suggestion of any unsettled questions of state law of substantial importance to the federal issues. And the statute clearly could not be upheld without adjudication of the several constitutional claims. On the contrary the briefs of all parties are confined almost exclusively to argument on the merits of the

federal claims raised. And appellee's claims about state law matters argue not that the plaintiff class might be entitled to a declaratory judgment in state court, or even that the basic claims here would be put in a different setting, but at most that other classes may be similarly disadvantaged [4].

This is an inappropriate case for abstention. While there may be undecided questions of state law of marginal relevance to some claims, viz, availability of appointed counsel for mothers or guardians ad litem for children, neither the District Court nor the parties relied on a particular interpretation of these issues, App. 139, n.14. Such questions could not be dispositive of this case or of a hypothetical class action brought in state court. There are, to appellant's knowledge no serious unsettled state law questions relevant to appellants substantive claims: conflict with the Social Security Act and violation of their right to privacy. Nor is there state court authority favorable to the position appellants would have to assert in state court, compare Harris County Commissioners v. Moore (supra). There is, in short, no state law question of which counsel is aware which is substantial enough to warrant, much less to mandate, abstention in this case.

There is, of course, no lack of state administrative interpretation of Section 52-440b; appellants seek, inter alia, to enjoin enforcement of Department administrative policies implementing the statute, App. 11. Several trial courts have had the opportunity to construe the statute and have not narrowed it to avoid the constitutional claims appellants raise, Children's Br. App. 7a-48a, Amicus Br. App. 1a-44a. Nor are state appellate courts likely to resolve any such issues since review is at most restricted and at worst nonexistent, See Children's S.B. 21-24. The second premise for abstention,

that there is at least a substantial possibility of a state court construction which would significantly modify the federal issues, is lacking here .

Even if the waiver were disregarded, the undecided questions were of great significance, and there were a substantial possibility of state constructions which would avoid the necessity of constitutional adjudication in the case of individual appellant's abstention would not be indicated here. Connecticut has no class action provision comparable to Rule 23 F. R. Civ. P. In order to proceed on behalf of the class, appellants would have to initiate a declaratory judgment action and give notice to all class members; Conn. Gen. Stats Section 52-29, Conn. Practice Book Sections 307-312. See, Especially P.B. Section 309(d). Compare Rule 23(b)(2) F.R. Civ. P. And see Sosna v. Iowa __U. S. ___, 42 LEd2d 532, 539, n. 4 (1975). Obviously they cannot afford to do so. An attempt to raise all such issues defensively might fail and in any case would result in truncated adjudication, substantial delays and vast duplication of effort. Quite apart from the procedural difficulties with direct or habeas corpus review of 52-440b decisions by appellate courts, and from the Townsend doctrine (See Children's S.B. 21-22), there is simply no adequate, actually available state remedy the appellant class could utilize to obtain a determination of any such undecided questions. Under the circumstances, abstention is inappropriate.

CONCLUSION

In applying the policy considerations underlying the equitable principles developed regarding federalism to the case at bar, it is clear that neither considerations of comity nor the doctrine of abstention is appropriately applied to relegate appellant mothers to their state courts and remedies. This case is, at this time, fully appropriate for federal decision on appellants requests for declaratory and injunctive relief.

RESPECTFULLY SUBMITTED

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IN THE

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SUPPLEMENTAL BRIEF OF APPELLEE

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STATEMENT

On February 25, 1975, this Court directed the parties to submit briefs as to whether either this Court or the District Court should reach the merits of the constitutional issues presented by the Appellants and further directed the parties to present their arguments in light of Younger v. Harris, 401 U.S. 37 (1971).

For reasons as will appear hereinafter, the Appellee-Norton urges this Court to reach and decide the merits of the Appellants' constitutional attack on Connecticut's statute, Section 52-440b of the General Statutes of Connecticut.[1].

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1. It is the understanding of the Appellee's counsel that all parties in the instant action urge this Court to reach and decide the merits of the constitutional issues claimed by the Appellants. The absence of a disagreement between the parties on this point would seem to have some significance to this Court. See, e.g. Sosna v. State of Iowa, 43 U.S.L.W. 4125,4126 and n.3 (1975).

ARGUMENT

I. THE FACTS OF THE INSTANT ACTION COMPELS THAT THE INSTANT ACTION BE NOT REMANDED WITHOUT THIS COURT DECIDING THE MERITS OF THE CONSTITUTIONAL ISSUES.

It is to be recalled that the named Appellants (plaintiffs) failed to raise any of their constitutional claims in the proceedings in the Connecticut Circuit Court.[2]. After instituting the instant action in the District Court,[3]. the named Appellants sought in the Connecticut Circuit Court and were granted by that Court a stay of proceedings pending the instant action. Faced with no constitutional claims before it, the Connecticut Circuit Court focused its attention on the District Court's concern for the extraordinary circumstances surrounding the welfare of the class of children certified in the instant action and on the constitutional issues presented to the District Court. In view of these circumstances, inter alia, the Connecticut Circuit Court exercised its discretion by granting the stay of proceedings.[4].

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2. Connecticut Public Act 74-183 (1974), effective December 31, 1974, consolidated what had been the Connecticut Circuit Court into the Connecticut Court of Common Pleas. The petitions under the statute at issue, Section 52-440b of the General Statutes of Connecticut, are now brought to the Connecticut Court of Common Pleas.

   The Appellee has always maintained that the proceedings under the statute at issue are civil.

3. The Appellants relied on 42 U.S.C. Section 1983 for a cause of action. Doe v. Norton, 365 F.Supp. 65,68 (1973).

4. The Appellants and the counsel for the class of children certified in the instant action have presented no evidence whatsoever which would show that the Connecticut Circuit Court shirked or avoided its duty with respect to deciding the merits of the constitutional issues presented in the instant action as claimed by the Appellants and by the counsel for the children on February 25, 1975 in oral argument before this Court.

Having some background as to what transpired in the Connecticut Circuit Court, the Appellee proceeds to discuss Younger against such a background. In Younger, supra at 40, the Court stated that a federal court should not issue an injunction to stay proceedings in a state court in violation of a long standing judicial policy and of 28 U.S.C. Section 2283, which provides:

> "A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."

The Court in Mitchum v. Foster, 407 U.S. 225 at 242-43 (1971) discusses at some length Younger. The Court in Mitchum, after discussing the history of 42 U.S.C. Section 1983, concluded that Section 1983 did fall within the "expressly authorized" exception of Section 1983. This in effect means that in a Section 1983 action, the anti-injunction statute does not absolutely prohibit in such an action a federal court from issuing a federal injunction in a pending state court proceeding. Id. at 243. Even so holding, the Court in Mitchum made it plain that aside from the anti-injunction statute the principles of equity, comity, and federalism, on which the long standing judicial policy discussed in Younger is based upon, are still applicable when a federal court is asked to enjoin a state court proceeding. Id. It is in this context that the Court in

Mitchum discusses Younger as follows:

> ". . . in Younger v. Harris, 401 U.S. 37, and its companion cases, the Court dealt at length with the subject of federal judicial intervention in pending state criminal prosecutions. In Younger a three-judge federal district court in a Section 1983 action had enjoined a criminal prosecution pending in a California court. In asking us to reverse that judgment, the appellant argued that the injunction was in violation of the federal anti-injunction statute. 401 U.S., at 40. But the Court carefully eschewed any reliance on the statute in reversing the judgment, basing its decision instead upon what the Court called 'Our Federalism' --- upon 'the national policy forbidding federal courts to stay or enjoin pending state court proceedings except under special circumstances.' 401 U.S., at 41,44.
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> In Younger, this Court emphatically reaffirmed 'the fundamental policy against federal interference with state criminal prosecutions.' 401 U.S., at 46. It made clear that even 'the possible unconstitutionality of a statute "on its face" does not in itself justify an injunction against good faith attempts to enforce it.' 401 U.S., at 54. At the same time, however, the Court clearly left room for federal injunctive intervention in a pending state court prosecution in certain exceptional circumstances --- where irreparable injury is 'both great and immediate,' 401 U.S., at 46, where the state law is"flagrantly and patently violative of express constitutional prohibitions,"' 401 U.S. at 53, or where there is a showing of 'bad faith, harassment, or . . . other unusual circumstances that would call for equitable relief.' 401 U.S., at 54. . . ." 407 U.S. at 229,243. Footnote omitted.

In Mitchum, part of Mr. Chief Justice Burger's concurring opinion notes that the Court has not yet reached or decided exactly how much of a restraint is imposed by the principles of equity, comity, and federalism on a federal court asked to enjoin state civil proceedings. 407 U.S. at 244.

After noting the three statutory exceptions in 28 U.S.C. Section 2283, the Court in Younger noted in addition a judicial exception to the long standing policy evidenced by the anti-injunction statute, to wit: "where a person about to be prosecuted in a state court can show that he will, if the proceeding in the state court is not enjoined, suffer irreparable damages." Younger v. Harris, supra at 43. Citation and Footnote omitted. This judicial exception requires that the prosecuted person has no adequate remedy at law. Id. at 43. In addition, the irreparable injury is insufficient unless it is 'both great and immediate'. Id. at 46. In further discussing the prerequisites of bad faith and harassment often associated with irreparable injury, the Court in Younger stated the following:

> "There may, of course, be extraordinary circumstances in which the necessary irreparable injury can be shown even in the absence of the usual prerequisites of bad faith and harassment." 401 U.S. 53.

The judicial exception to the long standing public policy against federal courts interfering with state court proceedings discussed in Younger applies in the instant action. The extraordinary circumstances in which irreparable injury, both great and immediate, has been suffered and/or will be suffered by the class of children certified in the instant action not only warranted the District Court in reaching and deciding the merits of the constitutional issues in the instant action, but

demands that this Court should reach and decide the merits of the constitutional issues as well.[5] This is not to say that the State of Connecticut, including the Appellee-Norton, has not suffered or will not suffer irreparable injury, both great and immediate, under such extraordinary circumstances surrounding the class of children in the instant action. Often the rights, interests and obligations of the State are fused with the rights, interests, and obligations of children. For example, this fusion would exist in the right of the State to establish paternity of an illegitimate child and to pursue support on behalf of such child from its putative father.[6]

The concern of the District Court for the extraordinary circumstances in which irreparable injury has been suffered and/or will be suffered by the class of children certified in the instant action is expressed by the District Court throughout its ruling on the application for a preliminary injunction, Doe v. Norton, 356 F. Supp. 202 (D. Conn. 1973), and throughout its memorandum of decision, Doe v. Norton, 365 F. Supp. 65

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5. Although the class of children in the instant action are represented by their own counsel, it must be kept in mind that it is the policy of our law to attempt in every way possible to protect minor children. Fedor v. Manwehn Council, 21 Conn. Supp. 38,41 (1958). It thus falls upon the State of Connecticut, including the Appellee-Norton, to carry out such a policy in the instant action under the doctrine parens patriae. See, e.g. Goskarian's Appeal, 110 Conn. 463,468 (1930).

6. In many cases where the rights of a child are snuffed out, the rights of the State are likewise snuffed out. Much of this was discussed in the Appellee's brief.

(D. Conn. 1973). A brief summary of this concern by the District will demonstrate why the District Court felt compelled to reach and decide the merits of the constitutional issues.

The District Court discussed in some detail the essential right of all children to receive support from their fathers. Doe v. Norton, supra, 365 F. Supp. 65 at 79-80 and n. 25. The District Court in Doe v. Norton, supra, 356 F.Supp. 202 at 206 pointed out that if the paternity of an illegitimate child is not established, such child is "subjected to the additional risk that he will be forever deprived of many rights he is qualified to receive, even though an illegitimate child of his father."[7] The District Court in Doe v. Norton, Id., then pointed out what those rights of the illegitimate child are quoted in the margin.[8] The District Court, Id. at n. 6, noted that "history

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7. Many of these rights reach a constitutional level or the level of a federal protected right. E.G., Weber v. Aetna Casualty & Surety Co., 406 U.S. 164 (1971); Levy v. Louisiana, 391 U.S. 68 (1967); Gomez v. Perez, 409 U.S. 535 (1973).

8. ". . . the trend of the law is to separate the label 'illegitimate' from the word 'child' to prevent their exclusion from benefits to children. E. g., Weber v. Aetna Cas. & Sur. Co., 506 U.S. 164, 92 S.Ct. 1400, 31 L.Ed.2d 768 (1971) (workmen's compensation benefits); Glona v. American Guarantee & Liab. Ins. Co., 391 U.S. 73,88 S.Ct. 1515, 20 L.Ed.2d 441 (1968) (wrongful death statute); Levy v. Louisiana, 391 U.S. 68,88 S.Ct. 1509, 20 L.ed.2d 436 (1968) (wrongful death statute); Davis v. Richardson, 342 F.Supp. 588 (D. Conn) (3-Judge District

and literature are replete with examples of anguish suffered by illegitimate children denied the satisfaction of knowing their paternity." The District Court was quite concerned with the latter point and found out that the scope of the statute at issue was intended not only to protect the state's coffers, but also to establish the paternity of all illegitimate children so that they might enjoy the long term psychological advantages as well as economic advantages. Doe v. Norton, supra, 365 F.Supp. at 73 n. 10.

In discussing the balance of hardships in reference to whether a preliminary injunction should issue, the District Court in Doe v. Norton, supra, 356 F.Supp. 202, considered the

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Court), aff'd, 409 U.S. 1069, 93 S.Ct. 678, 34 L.Ed.2d 659 (1972) (social security death benefits); Ballentine v. De Sylva, 226 F.2d 623 (9th Cir. 1955) (copyright statute); Middletown v. Luchenbach S.S. Co., 70 F.2d 326 (2d Cir.), cert. denied, 293 U.S. 577,55 S.Ct. 89, 79 L.Ed. 674 (1934) (death on the high seas, "children" includes illegitimates); Turner v. Metropolitan Life Ins. Co., 56 Cal.App.2d 862, 133 P.2d 859 (1943) ("children" in life insurance policy includes illegitimate children). In all of the foregoing cases the interest of the father was only tangential to that of his illegitimate child, for the benefit to the child was not at the expense of his father. But in Gomez v. Perez, 409 U.S. 535, 93 S.Ct. 872, 35 L.Ed.2d 56 (1973), where the same interest of the father as in these cases was at stake, the Supreme Court held that it was a denial of equal protection for a state to exclude illegitimate children from the obligation of a father to support his children."

time factor which is crucial for the children. In this connection, the District Court stated the following:

> "But if the family is to be taken into account, and it must be, hardship to the child cannot be left out of consideration.
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> As noted above, these children stand to reap significant benefits if paternity is established.
>
> When the effect of the continued denial of the right to substantial benefits accorded to children generally is balanced against the effect which disclosure of the name of a child's father will have on any future relationships with him, the hardships fall more heavily on the child than on his mother.
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> Another factor militating against the grant of a preliminary injunction is the presence of a statute of limitations which provides that a paternity suit must be brought within three years from the date of the child's birth. Once the third birthday of a child has passed without action, the name of his father may never be disclosed to him. Even if it is disclosed thereafter, years may go by before there is an opportunity to make a claim to a benefit derived through his father, and the more stale such a claim is the more difficult it will be to prove it. The problems with respect to proof of paternity are formidable in any case.
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> For the foregoing reasons, the application for a preliminary injunction is denied. However, the court, as soon as it is designated will expedite a hearing on the merits." Id. at 207. Footnote omitted.

The rights and benefits of which the illegitimate child derive through his father, discussed in Doe v. Norton, supra, 356 F.Supp. 202, remained significant factors to the District Court in Doe v. Norton, supra, 365 F. Supp. 65, throughout its

entire consideration of the Appellant's statutory and constitutional claims. In addition, when the District Court certified the class action, Doe v. Norton, supra, 365 Supp. at 69, the class of unnamed illegitimate children described in the certification acquired a legal status separate from the interest asserted by the named-Appellants. Sosna v. State of Iowa, 43 U.S.L.W. 4125,4127 (1975). Thus, the rights and benefits of which the illegitimate children in the class derive through their fathers took on an added significance to the District Court in deciding the merits of the instant action.

In examining the District Court's ruling on the application for a preliminary injunction and its memorandum of decision, it is all too apparent that the District Court was not only concerned with the rights of and benefits to any member in the class of children in the instant action, but also with the time factor running against such rights and benefits. The practical demands of time may prove fatal to the rights of and benefits to any member in this class of children. In any event, the passage of time only serves to increase the risk of loss to the rights and benefits to any member child of the class.[9]

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9. Although this discussion on this point is expressed in terms of what might possibily happen to any child as a member of the class, based on our own daily experience we cannot say that such possible happening is hypothetical. It is the Appellee's position that all such children are suffering the loss of rights and benefits in some form or another.

Considering the time factor problem with which the illegitimatechild in the instant action is faced with, his plight may be summarized as follows: with the passage of time the illegitimate child as a member of the class in the instant action has nothing to gain and everything to lose. For example, if one or both parents of an illegitimate child becomes deceased before the identity of the child's father is disclosed, or if the statute of limitations or anything else makes the establishing of paternity impossible or difficult because of a failure to disclose the father's identity, many of the economic rights of which the child qualifies for through his father may be forever cut off. More important, the satisfaction of knowing who his father was may also be forever cut off from the illegitimate child. Even if the illegitimate child is lucky enough to eventually obtain one or more of his rights and benefits in such a situation, they will no doubt be obtained only after substantial and aggravating delay. This is the type of injury which is being experienced at this very moment by the illegitimate child in the instant action. As such, it cannot be stressed enough what was noted by Judge Blumenfeld that even if the identity of the illegitimate child's father is somehow disclosed after the running of the statute of limitations, "years may go by before there is an opportunity to make a claim to a benefit derived through his father, and the more stale such a claim is the more

difficult it will be to prove it. The problems with respect to proof of paternity are formidable in any case." 365 /F. Supp. 207.

The problem, as outlined above, amounts to an exposure of harm to the illegitimate child, i.e., the injury already suffered by the illegitimate child and the continuation of the risk of injury to such child, which is great at the very moment. The coming of tomorrow will not lessen such harm. Future litigation, whether in this or any other action, involving the injury suffered and the injury to be suffered by the illegitimate child with respect to his rights and benefits will give no assurance of an adequate remedy at law.

In connection with the non-existence of an adequate remedy at law, we should note that the needs and wants of the illegitimate child, as with any child, cannot be placed on the same plain with the needs and wants of the adult who can fend for himself. In legal matters, we expect the adult to hold in abeyance his needs and wants by absorbing temporarily the deprivation of those needs and wants until they can be secured through a future legal course of action, such as litigation which often involves substantial periods of time. This future legal course of action is usually on a "maybe" basis as the

adult is never absolutely sure he can make his claim good. But at every step of the way, the adult is able to move swiftly and exercise his discretion in all legal matters. On the other hand, the illegitimate child is under many disabilities in legal matters, as with all children, including the inability to exercise his discretion. In addition, the illegitimate child's needs and wants, as with the needs and wants of all children, are always both great and immediate. Being under the age of discretion, food, shelter, clothing, and the like for any child must always be provided now and cannot be delayed, especially delayed indefinitely. In this context, we cannot expect any child to hold his needs and wants in abeyance by absorbing temporarily the deprivation of those needs and wants while he attempts to secure his rights therein through some future legal course of action. Even after successful litigation, a retroactive lump sum payment of an economic benefit to an illegitimate child does not equate itself with the child's needs and wants which existed at a prior time. In such a situation, the child will have suffered because of his inability to use discretion which is not true with an adult.

The problem as outlined above reduces itself as a quagmire for the class of children in the instant action. The time factor has run and will continue to run against the rights and benefits of any illegitimate child in the class. Every member

of the class of illegitimate children has already lost some rights and benefits because of the delay of litigation. If some of the children have not already forever lost certain rights and benefits, there will no doubt be children who will forever lose certain rights and benefits because of the delay occasioned by the remanding of the instant action to the District Court without this Court reaching and deciding the merits of the constitutional issues. As regards those rights and benefits which have not already been lost, the chances of obtaining these rights and benefits by the illegitimate children decrease daily, especially if this Court declines to reach and decide the constitutional issues. This then constitutes the irreparable injury exposed to each illegitimate child in the class, which injury is both great and immediate. Any remedy at law open to the illegitimate children gives no assurance that any rights and benefits of the illegitimate children will not be lost to one or more of the illegitimate children in the class.

Where the illegitimate child loses his rights and benefits through the non-disclosure of the identity of his father, the State is blocked in its efforts to gain the same or similar rights and benefits on behalf of the illegitimate child and/or on behalf of the State. Perhaps the clearest example of this is where the State attempts to collect support from a father of an illegitimate child. If the illegitimate child is deprived forever

from knowing the name of his father, the State suffers no less of an irreparable injury.

No doubt the District Court reconciled its action with the principles in Younger by recognizing the extraordinary circumstances of the class of illegitimate children as discussed above and then took the most favorable action with respect to the class of illegitimate children, i.e., it decided the merits of the constitutional issues with dispatched thereby minimizing further harm to the children. In considering the dissipation of the rights and benefits of the class of illegitimate children, the District Court was confronted with the reasonable likelihood that the dissipation would become substantially worse with the passage of time. Under the circumstances, the District Court further recognized that there was no adequate remedy at law for the class of children.[10]

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10. This is so in the sense that the Appellants would have to plead their constitutional claims in the Connecticut Circuit Court, which they failed to do, and start at the beginning. From that point on, the litigation of the constitutional issues in the state courts would have to run its course as in any state judicial system before coming to this Court. On the other hand, the instant action in the District Court was ready for immediate trial with a direct review by this Court. In this way, the interest of the class of illegitimate children were being served by keeping further delay by litigation at a minimum. In addition, the District Court must have been aware that if the merits of the issues in the instant action were decided in favor of the Appellee, the plight of the children would not end there; many of the children would be forced to further litigate their claims derived through their father. Time was of essence to the this class of children.

The instant action before this Court is in a worse posture then when it was before the District Court. If this Court declines to reach and decide the merits of the constitutional issues, the delay occasioned by a remand on this basis to the District Court can only aid in further dissipating the rights and benefits of the class of illegitimate children as well as the rights and benefits of the State of Connecticut. At the same time, the mothers of the class of illegitimate children will have, in substance, achieve their goal of non-disclosure at the expense of the rights and benefits of their children.

II. ADDITIONAL CONSIDERATIONS MILITATING AGAINST ABSTENTION.

A. Inherent delay in the abstention process:

This Court has pointed out that because delay is inherent in the abstention process and because there is a danger that valuable federal rights might be lost without the expeditious adjudication in the federal court, abstention is to be invoked only in special circumstances, Harris County Comm'rs. Court v. Moore, 43 U.S.L.W. 4222,4224 (Feb. 18, 1975), "and only upon careful consideration of the facts of each case." Baggett v. Bullitt, 377 U.S. 360,375-379 (1964); Railroad Comm'n. v. Pullman Co., 312 U.S. 496,500 (1941). This would apply all the more so where, as in the instant action, litigation has already been long delayed. Hostetter v. Idlewild Liquor Corp., 377 U.S. 324,329 (1963).

The delay in the abstention process insofar as the instant action is concerned is critical to every illegitimate child in the class.[11.] The magnitude of this problem can be seen by going back before the instant action was instituted in the District Court.[12.] For example, if an illegitimate child or the State seeks disclosure of the identity of the child's father from the child's recalcitrant mother under 52-440b in order to obtain support for the child, where the time left under the statute of limitations pertaining to paternity is comparatively short, the delay in litigating the constitutional issues in the State courts will be considerably longer than in the federal court.[13.] It is the same with any other right and benefit of the illegitimate child which he seeks through the identity of his father.[14.]

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11. We have noted before in this brief that some of the rights and benefits of the illegitimate child reach constitutional levels or fall within federal protected rights. Note 7 supra.

12. This should also be apparent from our discussion on the illegitimate child's rights and benefits under Part II of this brief.

13. It should be kept in mind that there is at least one additional court level in the process of review in the Connecticut state court system before the federal constitutional issues can come before this Court through such a system. Of course, there may be other reasons for delay, not necessarily unjustified, in the state judicial review system. Thus, we may say that generally delay in litigation of federal constitutional issues is longer in the state judicial system, but not necessarily in a particular case.

B. No unsettled question of state law:

It is not an automatic rule that the abstention doctrine is to be applied when a federal court is faced with a doubtful issue of state law. Baggett v. Bullitt, supra at 375 and n.11. The "special circumstances" discussed in Harris County Comm'rs. Court v. Moore, supra, must exist and ascertainment of whether the special circumstances exist must be made on a case by case basis. Id. This applies to the Pullman abstention doctrine, Railroad Comm'n. v. Pullman Co., supra., wherein federal courts should decline to grant relief when a federal constitutional claim is based on an unsettled question of state law in order to allow the state courts the opportunity to pass on the unsettled question of state law thereby avoiding the possibility of unnecessarily deciding a constitutional question. Various applications invoking this doctrine have been noted by this Court and set forth as a guide. E.g. Askew v. Hargrave, 401 U.S. 476 (1971) (a state court action pending which may likely resolve the state law question underlying the federal constitutional claim); Reetz v. Bozanich, 397 U.S. 82 (1970) (matters peculiarly within the province of the local courts concerned with the state law question which in turn affect the federal constitutional claim).

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14 It also should be kept in mind that by instituting proceedings under Section 52-440b, the statutes of limitations pertaining to paternity actions is not tolled. Consequently, the illegitimate child and the State is under constant pressure to secure the rights and benefits of the illegitimate child as quickly as possible after the birth of the child.

It has been pointed out that the statute at issue would be comprehensive only if all illegitimate children whose mothers are not receiving welfare had guardians or guardians ad litem appointed for them. Doe v. Norton, supra, 365 F.Supp. at 85 n.2 (Judge Newman's concurring opinion). Also, there has been discussion that the Connecticut courts might read the statute at issue as requiring the appointment of a guardian ad litem for the child. Supplemental Brief of children of Appellants at 2. These notions are then theorized to somehow constitute an unsettled question of state law. Some observations will be of aid to this Court.

First, there is authority for the appointment of guardians ad litem for minor children [15.] in all proceedings in the Connecticut state courts, except in juvenile court proceedings.[16.] Section 45-54 of the General Statutes of Connecticut, Revision of 1958.

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15. There is no reason to suppose that Connecticut courts would read Section 45-54 as excluding illegitimate children. On this point, no unsettled question of state law exist in the concrete sense.

16. In juvenile court proceedings, the child has the right of counsel. Section 17-66b of General Statutes of Connecticut. In addition, there is no authority specifically barring the juvenile court from appointing a guardian ad litem in addition to the child being represented by counsel.

Second, the appointment of guardians ad litem is available to minor children regardless of whether or not their parents receive welfare assistance.[17.] Section 45-54 of the General Statutes of Connecticut. Without some evidence to the contrary, it is unrealistic to conclude that there is an unsettled question of state law existing as to whether the Connecticut courts could or would read Section 45-54 as not including minor children of parents receiving welfare assistance.

Third, whether Section 52-440b requires that guardians ad litem be appointed for children whose mothers are not receiving welfare assistance would not avoid, fundamentally alter, or eliminate the constitutional issues in the instant action. In the case where a guardian, natural or otherwise, request the disclosure of the identity of an illegitimate child's father from the child's recalcitrant mother, the guardian may petition the Connecticut Court of Common Pleas under Section 52-440b. In the case where no guardian exists, any interested person may petition the Connecticut Courts under Section 45-54 and Section 52-440b for the appointment of a guardian ad litem for the purposes of seeking the disclosure. See also Clark v. Green, 29 Conn. Su

17. Indeed, this counsel has obtained guardians ad litem in divorce matters for minor children of mothers receiving welfare assistance and this counsel knows of no authority which would have barred such action at that time.

438 (1971); McCarrick v. Kelly, 70 Conn. 642,646 (1898). This may be done by such interested person as next best friend of the child.[18.]

In the case where the interested person petitions the court for an appointment of a guardian ad litem for the purposes of seeking disclosure, if the request for the appointment of a guardian ad litem is refused, it is grounds for error and subject to appellate review. See Harris v. Rosenberg, 43 Conn. 227, 231 (1875). Just because there may be a failure to request disclosure under Section 52-440b in a particular case by a guardian or next best friend would not cause Section 52-440b to be interpreted as creating a class of mothers not included in and/or barred from the operation of Section 52-440b or cause Section 52-440b to be interpreted as violating some constitutional provision.[19.]

There is no uncertainty as to Section 52-440b applying to

18. "But it is not necessary that the prochein ami should have received authority from the infant, to enable him to sue in her name. The law which permits her to sue and appear only by her guardian or next friend, regards her at all times during her infancy as without sufficient knowledge and experience to properly decide when or how an action should be prosecuted for her benefit. 'The law knows no distinction between infants of tender and of mature years; and as no special authority to sue is requisite in the case of an infant just born, so none is requisite from an infant on the very eve of his attaining his majority.' Morgan v. Thorne, 7 M. & W. *400. *408. The prochein ami is regarded as an officer of the court by which, by statute in England, he was originally appointed. It is his duty to care for the interests of the infant in the institution and conduct of suits for his benefit, his power and responsibility in the performance of that duty being similar to that of guardians. Under our practice no previous appointment by the court is required, and the prochein ami named in the writ is permitted to appear and prosecute in the infant's name, though if he

illegitimate children of mothers not receiving welfare assistance because plainly the appointment of guardians ad litem is applicable to such children under Section 45-54 as it would be to illegitimate children of mothers who receive welfare assistance. Thus, question is not whether the guardians ad litem provision under Section 45-54 applies to illegitimate children of mothers not receiving welfare assistance, but whether in a particular case falling within Section 52-440b a guardian ad litem will be in fact appointed by a Connecticut Court for an illegitimate child whose mother is not receiving welfare assistance. This question is a matter within the discretion of the Connecticut State Courts, which discretion is always subject to judicial review. Judge Newman's contention, therefore, amounts to no more than an

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is not a proper person or fails to properly discharge his duties, the court may remove him and appoint another person in his place." McCarrick v. Kealy, 70 Conn. 642,646 (1898).

19. No legislature and no court has the right to blindly require the appointment of guardians ad litem for illegitimate children born in the state. Some rational procedure must exist to make the appointment of a guardian ad litem only where needed. No system can guarantee faultless operation. For example, if the State required appointment of guardians ad litem at birth for all illegitimate children of recalcitrant mothers, could not such mothers falsify the father's name causing the problem to go undetected and achieving their goal of non-disclosure? An oath provision would have its constitutional problems and certainly not guarantee a better system than provided by judicial supervision.

uncertainty about the appointment of a guardian ad litem in a particular case for an illegitimate child whose mother is not receiving welfare assistance; it is not the sort of uncertainty or vagueness that "leaves those subject to the statute uncertain about what is required of them."[20] Harris County Comm'rs. Court v. Moore, supra at 4225 n.9. Where this "applicability of the statute is uncertain, abstention is often proper. . . ." Id. Where, on the other hand, the uncertainty or vagueness claim goes to the obligations imposed by the statute, abstention is not proper "since a single state construction often would not bring the challenged statute 'within the bounds of permissible constitutional certainty.' Baggett v. Bullitt, 377 U.S. 360, 377-378 (1964); Proceunier v. Martinez, 416 U.S. 396,401 n.5 (1974)." Id.

In the instant action, the construction by a single state court of whether guardians ad litem are required under Section 52-440b for children whose mothers are not receiving welfare assistance would not eliminate the Appellants' constitutional claims with respect to the first, third, fourth, fifth, eighth, ninth, and fourteenth amendments. The Appellants' equal protection claim would not be eliminated since their equal protection

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20. It would appear that Judge Blumenfeld and Judge Timbers in the District Court and the Appellee found no problem with respect to guardians ad litem situation.

claim is based on a classification consisting of all illegitimate children and their mothers.[21]. Appellants' Brief at 25-28.

Even if the Appellants' equal protection claim was based on a classification of A.F.D.C. assistance mothers with illegitimate children as opposed to non-A.F.D.C. assistance mothers with illegitimate children, a state court construction of 52-440b requiring appointment of guardians ad litem for all illegitimate children of non-A.F.D.C. assistance mothers would resolve nothing. A.F.D.C. assistance mothers and non-A.F.D.C. assistance mothers with illegitimate children would both be subject to Section 52-440b before such a construction as well as after. Doe v. Norton, supra, 365 F.Supp. at 81. In reality, the contention of the A.F.D.C. assistance mothers that "because of the division of authority among different persons to initiate proceedings under the statutes proprotionately fewer such proceedings would be brought by guardians or guardians ad litem than by the commissioner" would remain the same. Id.

As discussed above, the statute at issue contains no uncertainty or ambiguity. Where this is the case, federal courts should not abstain but should proceed to determine the federal constitutional issues. Wisconsin v. Constantineau, 400 U.S. 433,439 (1970).

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21. This would hold true under the District Court's certification of the classes consisting of: (1) those mothers receiving A.F.D.C. assistance who refuse to comply with Section 52-440b; and (2) the illegitimate children of those mothers.

Before concluding this argument as to guardians ad litem, other observations shed light on the guardian ad litem problem.

As with the prochein ami, the guardian ad litem appointed in a particular case is subject to the control of the court. Section 45-54 of the General Statutes of Connecticut. Whether anything is in the best interest of any child still remains within the discretion of the Court, subject to judicial review.

Counsel for the Appellants' children states that the "mothers of children who have just left the welfare rolls may not be proceeded against by the Welfare Commissioner (under Section 52-440b) although the children's fathers are liable to the State for past support and lying-in expenses." Supplemental Brief of Children of Appellants at 5. In Connecticut, the child who received welfare assistance remains liable to repay the State the amount of assistance paid to such child, as well as his father. Thibeault v. White, State Welfare Commissioner, et al, 36 Conn. L.J. No. 37, page 12 (March 11, 1975). In a case where a mother and her illegitimate child go off the welfare rolls, there is nothing under Section 52-440b which prevents the State of Connecticut from seeking the appointment of a guardian ad litem. In this way, the guardian ad litem in turn may seek the identity of the child's father in an attempt to obtain reimbursement from the child's father for the welfare debt owed

to the State by the child. Without evidence to the contrary, this would serve in the interest of the child.

It should be noted that the statement made by counsel for the Appellants' children that "[w]here children have an interest in proceedings in probate court or judvenile court, a guardian must be appointed to protect their interest" is not accurate. In such proceedings, the appointment of a guardian ad litem falls within the discretion of the Court. Section 45-54 of the General Statutes of Connecticut; Rules for the Juvenile Court, Connecticut Practice Book (1963), Section 1122 (effective July 1, 1974).

We believe that there are other facts in addition to those already discussed above which compel that this case be not remanded without deciding the merits of the constitutional issues. The application of Connecticut's statute of limitations as regards paternity matters can cause problems to the Appellee if there is further delay in deciding the merits of the instant action.

Section 52-435a of the Connecticut General Statutes reads in part as follows:

> "***No such petition shall be brought after three years from the birth of such child, or after three years from cessation of contribution toward support of the child by the putative father whichever is later, provided the provisions of section 52-590 shall be applicable to this section. ***"

Section 52-590 reads as follows:

> "In computing the time limited in the period of limitation prescribed under any provision of chapter 925 or this chapter, or section 52-435a, the time during which the party, against whom there may be any such cause of action, is without this state shall be excluded from the computation, except that the time so excluded shall not exceed seven years."

When reading the above two cited statutes in connection with the specific statute in question, namely Section 52-440b, it is easily apparent that until the unwed mother discloses the name of the putative father, the state welfare commissioner is uncertain as to whether a three year statute or a seven year statute of limitations applies to the particular case. Thus, there are compelling reasons why the commissioner is concerned with the name of the putative father even though the child has already reached his third birthday.

There is another reason for the compelling of the name of the putative father inasmuch as under Connecticut practice, a

a statute of limitations must be specially pleaded.[22]. There is no reason why the welfare commissioner should anticipate just what defenses the alleged putative father will choose to make. Only the defenfant putative father can decide just what defenses he will choose to invoke.

In addition to the three year and the seven year statute of limitations, there is a one year statute of limitations which begins after judgment in an action for dissolution of marriage when a child born during marriage has been determined not to be the legitimate issue of such marriage. Section 46-26b(b) of the General Statutes of Connecticut, Revision of 1958. Thus, the child, for example might have reached his fifthteenth birthday and the welfare commissioner may still have a compelling reason to learn the name of the putative father.

Assuming for the moment that a particular putative father has an absolute defense to a bastardly action because the statute of limitations has passed, there still would be compelling reasons why the welfare commissioner would want the name of the putative father. While the latter might not want to support the illegitimate child directly by reimbursing the state welfare department, he may well agree to acknowledge that he is the father of the child which could satisfy the requirement of

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22.
Connecticut Practice Book of 1963 as Amended, Section 120 --- Denials; Special Defenses
"No facts may be proved under either a general or special denial except such as show that the plaintiff's statements of fact are untrue. Facts which are consistent with such statements but show, notwithstanding, that he has no cause of

dependent's benefits under the Veterans Administration and/or the Social Security Administration.

As indicated before, the concern for the class of children certified in this case is a compelling reason for this Court to decide the constitutional issues raised by the parties.

Although the Appellee urges this Court to decide the merits of the instant action, the Appellee wishes to state that he disagrees with the statements, arguments, and conclusions stated by the children's counsel, especially in Part II consisting of Sections A-D, in the supplemental brief submitted by the children's counsel. Our reasons for such disagreement were covered in the Appellee's main brief. However, the Appellee does point out that no motion to dismiss based on abstention was filed in the District Court. The Appellee further points out that in civil contempts, the right of complete judicial review is provided for by the Connecticut judicial system. Conn. Public Act No. 74-183, Section 9 (1974).

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action, must be specially alleged. Thus, accord and satisfaction, arbitration and award, coverture, duress, fraud, illegality not apparent on the face of the pleadings, infancy, that the defendant was non compos mentis, payment (even though nonpayment is alleged by the plaintiff), release, the statute of limitations and res adjudicata must be specially pleaded, while advantage may be taken, under a simple denial, of such matters as the statute of frauds, or title in a third person to what the plaintiff sues upon or alleges to be his own."

CONCLUSION

Based on the foregoing reasons, the Appellee urges this Court to decide the merits in the instant action.

Respectfully submitted,

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This is to certify that a copy of the foregoing Supplemental Brief was mailed First Class Mail, Postage Prepaid, by depositing same in a United States Mail Box on March 14, 1975, to each of the following:

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